

# CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

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## HEARINGS BEFORE THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

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APRIL 10, APRIL 24, AND MAY 8, 2013

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**Serial No. J-113-1**

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PART 2

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Printed for the use of the Committee on the Judiciary



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**NOMINATION OF SRIKANTH SRINIVASAN, OF  
VIRGINIA, NOMINEE TO BE CIRCUIT JUDGE  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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**WEDNESDAY, APRIL 10, 2013**

U.S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Committee met, pursuant to notice, at 2:32 p.m., in Room SD-226, Dirksen Senate Office Building, Hon. Christopher A. Coons, presiding.

Present: Senators Leahy, Schumer, Whitehouse, Franken, Coons, Hirono, Grassley, Hatch, Lee, Cruz, and Flake.

Senator COONS. I am pleased to call this nominations hearing of the Senate Committee on the Judiciary to order, and I would like to welcome our nominee as well as his family and friends who are here to offer support.

Today the Committee will hear testimony from Sri Srinivasan, who is nominated to be a judge on the DC Circuit Court of Appeals, a court which has not seen a nominee successfully confirmed to it since President George W. Bush's nominee to that court was confirmed in 2006. Today more than 1,500 days into President Obama's term, four of the 11 seats on the DC Circuit are open, putting the remaining judges under, in my view, undue strain. There are now roughly 188 pending cases per active judge on the DC Circuit, 50 percent higher than when the Senate confirmed Thomas Griffith to fill the then-11th seat in 2005.

Although the cases handled by the DC Circuit are unusually complex, the caseload per judge on that court is also higher than that of the Tenth Circuit to which the Senate recently confirmed Robert Bacharach. The President has nominated talented nominees to help alleviate this pressure. Caitlin Halligan waited more than 900 days for an up-or-down vote. She came with the American Bar Association's highest rating, glowing recommendations from bipartisan supporters, and a diverse legal career marked by distinctive service as New York's Solicitor General. Her nomination, sadly, was filibustered, and judging from the discussion in Committee and on the floor, this was in large part because of positions she had taken on behalf of the State of New York in litigation against gun manufacturers.

As a Senator, I do not believe I have the right to ask that judicial nominees have advocated only positions with which I agree. As Chief Justice Roberts has said, and I quote, "It is a tradition of the

American Bar that goes back before the founding of our Nation that lawyers are not identified with the positions of their clients.”

To do so, in my view, is unfair to advocates, to unpopular clients, and unfair to the American people. Every time the Senate holds up a nominee for partisan or political reasons, we lose not only the contributions of that candidate, but we make it harder to find talented individuals willing to serve.

The nominee before us today appears—from his qualifications, from my discussion with him, from my reading of his work, and from the many strong and bipartisan recommendations his nomination has received—to possess an exceptionally talented legal mind. He has served in the Solicitor General’s Office for both Republican and Democratic administrations. He has served with such distinction that 12 bipartisan, high-ranking officials in the Office of the Solicitor General have publicly endorsed his nomination.

Mr. Srinivasan has also represented an astonishingly diverse range of clients, from criminal aliens to large corporations to the United States itself. As a result, he has advocated legal positions that are sure to run counter to at least a few policy preferences of any elected official. But I will not judge him on a standard of ideological purity, particularly not with regard to any client he might have advocated on behalf of.

The DC Circuit is perhaps the most important appellate court in our Nation. It is called upon to decide issues of national importance, such as the legality of agency action and the tools employed in the work and the fight against terrorism. The cases that come before the DC Circuit require sober consideration, legal acumen, not ideological purity. In my view, when a President submits a qualified candidate of high character and sound legal mind, absent exceptional circumstances, that candidate is entitled to a vote.

I look forward to the testimony we will hear today, which I am confident will confirm what is apparent for Mr. Srinivasan’s qualifications. I hope that my colleagues will join with me to show the American people the Senate is not broken and that regular order is capable of addressing the vacancy crisis on the DC Circuit.

Before we turn to introductions and to the witnesses, I will yield to my distinguished Ranking Member, Senator Grassley, and then to our Committee Chair.

Senator.

Senator GRASSLEY. I asked for the right to speak after the two Senators introduce and after Senator Leahy speaks, because I, like you, have some philosophical points of view I want to make, not about the nominee but just things that need to be put on the record, so I do not want to hold up my colleagues.

Senator COONS. Thank you, Senator Grassley.

Senator Leahy, Chairman Leahy.

**OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S.  
SENATOR FROM THE STATE OF VERMONT**

Chairman LEAHY. Well, thank you. First, I want to thank Senator Coons for chairing this extremely important hearing. He has done this time and time again, and it means a great deal to me, especially as I have to be at another matter that requires my presence.

We originally planned this hearing for January. It was delayed. It had already been delayed from last year when this nomination was first made by the President. I agreed to an additional delay at the request of the Ranking Member to allow time for our staffs to better understand what, if any, role he had in the current position as Principal Deputy Solicitor General in the events leading up to the city of St. Paul, Minnesota, withdrawing a petition before the Supreme Court. I believe we have fully explored that issue, and certainly I am pleased with the very strong bipartisan support we have received for this nominee. So if anybody has some other questions about his qualification, come here now and raise them, because I would like to get this matter voted on.

We have the Republican filibuster that we just went through with the nomination of Caitlin Halligan, certainly one of the most qualified people, man or woman, that we have seen before this Committee in 25, 30 years. But after that filibuster, the DC Circuit has just seven active judges. It has got four continuing vacancies even though they have extraordinarily complex cases. They have a caseload per active judge of 188 pending appeals. We were told that we had to move judges on the First, Third, and Tenth Circuits, as Senator Coons indicated. They have less of a caseload.

I would also note, for those who are wondering, that the caseload today per active judge is higher than when Senate Republicans said we had to move forward to confirm President Bush's nominations to the DC Circuit just a few years ago. We were told because of the caseload it was essential that we move President Bush's nominees. It is a greater caseload now. It is time we start moving this one.

I thank you, Senator, and I will put the rest of my questions and statement in the record.

[The prepared statement of Chairman Leahy appears as a submission for the record.]

Senator COONS. Thank you, Chairman Leahy.

And at Senator Grassley's suggestion, I will now move to Mr. Srinivasan's home State Senators from the Commonwealth of Virginia to introduce the witness, following which Senator Grassley will make his opening statement.

Senator Warner, please proceed.

**PRESENTATION OF SRIKANTH SRINIVASAN, NOMINEE TO BE  
CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT,  
BY HON. MARK R. WARNER, A U.S. SENATOR FROM THE  
STATE OF VIRGINIA**

Senator WARNER. Mr. Chairman, although I am not sure I get the etiquette of this, Mr. Chairman, Mr. Ranking Member, and Senator Coons, and Senator Hatch, Senator Schumer, it is an honor for me to introduce my fellow Virginian and President Obama's nominee to the U.S. Court of Appeals for the DC Circuit, Sri Srinivasan.

Sri is exceptionally well qualified to carry out the duties and responsibilities of a judge of the U.S. Court of Appeals, as has been mentioned by Senator Coons, one of the most important courts of our land. He has got an exceptional background, exceptional broad

bipartisan support. Let me add a few other comments about his background.

Sri was born in northern India. His family immigrated to the United States when he was four years old. He did not have—I can say this since Senator Moran and Senator Roberts are not here right now. He did not have the good sense initially to move to Virginia. He settled initially in Kansas where he became a beloved fan of the KU Jayhawks. Sri, like me, is still an avid basketball player and fan.

After earning his bachelor's, J.D., and M.B.A. from Stanford, Sri moved to the Commonwealth to begin his legal career as a law clerk for Judge J. Harvie Wilkinson of the Richmond-based U.S. Court of Appeals for the Fourth Circuit. In addition, Sri clerked for Supreme Court Justice Sandra Day O'Connor, who was quoted as saying she believes he is "a splendid choice for the appellate court position."

As has been mentioned already as well, Sri spent time in the Office of the Solicitor General for both President Bush and President Obama and was most recently named Principal Deputy Solicitor General in August 2011.

Going through some of his professional recognition, he has been recognized by Chambers USA, Legal 500, Law Dragon, and the Best Lawyers in America as one of the country's leading appellate litigators. He was also named one of the 50 Most Influential Minority Lawyers in America by the *National Law Journal* and given the Cornerstone Award by the North American South Asian Bar Association.

As has also been mentioned, Sri, I think, brings a unique bipartisan support from both Democrats and Republicans. I have already mentioned his support by Justice Sandra Day O'Connor, but recently 12 former top officials in the Solicitor General's Office expressed their support in a letter to this Committee's leadership. And, again, that group included Democrats Walter Dellinger, Republicans Paul Clement, Ted Olson, and Ken Starr.

I also want to make one final comment before I turn it over to my good friend, Senator Kaine. I am very proud as well to be co-chair of the India Caucus. If this Committee moves forward on Sri's nomination and we, as I will expect to do, support him on the floor, Sri will be the first South Asian American ever to be nominated to the United States Court of Appeals. And I think he will bring an added both immigrant and unique perspective to the bench and will be a great asset to our legal system and judicial system in America.

Thank you.

Senator COONS. Thank you, Senator Warner.

Senator Kaine.

**PRESENTATION OF SRIKANTH SRINIVASAN, NOMINEE TO BE  
CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT,  
BY HON. TIM KAINE, A U.S. SENATOR FROM THE STATE OF  
VIRGINIA**

Senator KAINE. Thank you, Chairman Leahy, Ranking Member Grassley, Committee Members. It is a treat to be with you today. It is a treat to be here with my colleague, Mark Warner. We were



in law school together, Mark and I. I became a lawyer and he became a client.

[Laughter.]

Senator KAINE. So it is nice to share the same table with him. And it is also wonderful to be here with four Members of the House who have come here to support Sri Srinivasan's nomination: Mike Honda from California, Judy Chu from California, Ami Bera from California, and Grace Meng from New York. And to have you here in support of the nomination is a wonderful thing.

I just will begin by saying I care deeply about judges. Deeply about judges. I clerked for an appellate judge on the Eleventh Circuit, Lanier Anderson, who was a wonderful, long-serving member of the appellate court in Georgia. I practiced as a trial and appellate lawyer for 17 years and came before many, many judges. I have been a witness in courtrooms, both as a fact witness and as an expert witness, and observed judges in that capacity. As a city councilman, mayor, Lieutenant Governor, and Governor, I have taken place in the writing of laws and been sued for how the laws have been written. Then I really cared about the quality of the bench in those circumstances. And as Governor of Virginia, I chose judges, trial court judges, and judges on the intermediate court of appeals and two members of the Virginia Supreme Court when the legislature would deadlock in Virginia. Both Governor Warner and I had the chance to choose judges.

But the most important thing is I was married to a judge. Now, I am still married to her. She is not a judge anymore, but my wife, Anne, was a juvenile court judge for nine years, and all of those experiences make me care very, very deeply about the caliber, the character, and the skills of those who will occupy any judicial position in this country. And this position on the DC Circuit is incredibly important.

As Senator Warner mentioned, Sri Srinivasan is extremely well qualified. Maybe I am biased. As a Kansan who moved to Virginia, he and I have had at least that similarity. But he trained under two very superb appellate judges, and having done an appellate court clerkship with a wonderful judge, Lanier Anderson, you know, that beginning to a professional career for a lawyer is incredibly formative, because you work with somebody and get to learn about judicial temperament and the work ethic that is required.

J. Harvie Wilkinson, the former chief judge of the Fourth Circuit, was a judge's judge, somebody deeply admired. I live in Richmond where the Fourth Circuit is headquartered. I practiced in that court. He set a standard for output and work, but also for civility. The Fourth Circuit is an interesting court. If you have ever practiced before it, it is the only appellate court in the country that, after an argument, the judges come down from the bench, and they come down and shake the hands of the attorneys. And that has been a tradition for a very long time that bespeaks a civility and courtesy, and that is a trait that Sri learned and that he has.

And then he clerked, obviously, on the Supreme Court with a wonderful jurist, Justice Sandra Day O'Connor. Both Judge Wilkinson and Justice O'Connor, as Senator Warner mentioned, are strongly in support of Sri's nomination.

He has had the background of a private practice that has been thriving and diverse, of work for the United States in the Solicitor General's Office, and also as a teacher. And there is nothing that challenges your own thinking more than having to stand up in front of live minds and explain it and get questioned, and Sri has had that experience as well.

He has the complete support of all that he has worked with in any of those capacities—Government service, teaching, his work in the clerkship area, work in the Solicitor General's Office—and that speaks highly because lawyers are opinionated people, and usually two lawyers will have three opinions. But if all the lawyers and others he worked with are of a uniform opinion about his credentials, that says something very positive.

But the last thing I will say before letting him proceed is that ultimately to be a judge the most important thing is character. There is intellectual training, and there is work ethic. But the challenges that a judge faces, having to make decisions that literally are life and death in many instances, and to remember that it is not about the legal brief and it is not about the presentation of counsel, however skilled they are, but ultimately every case comes down to the lives of individuals to be able to do that with a firmness and with a conviction, but also with a humility and a willingness to learn and a willingness to improve. Those are the kinds of character traits that you want to see in judges, and I believe you may have already had the experience to interact with him, but you will see that he brings that humility—a sense of confidence that is well borne by his experience, but a sense of humility that would equip him well for the awesome task of being a Title III judge with life tenure.

You know, life tenure is a wonderful thing, but it can be a challenge as well to maintain a freshness of perspective and a humility in dealing with others. There would be no doubt that Sri Srinivasan would maintain those character traits that have brought him to this point if he is confirmed, and I am glad to be here and support him.

Senator COONS. Thank you. Thank you very much, both Senator Warner and Senator Kaine. I know you have a press of other business. We are grateful for your appearance before this Committee today.

I would like to turn to Senator Grassley for his opening comments before we swear in the witness.

**OPENING STATEMENT OF HON. CHUCK GRASSLEY, A U.S.  
SENATOR FROM THE STATE OF IOWA**

Senator GRASSLEY. Thank you very much.

First of all, I welcome the nominee and his family and friends to the Committee today. This is obviously a very big moment in your career. You and your family should be proud of your nomination. It is quite a significant accomplishment.

As I indicated waiting to speak, I have some different views than Senator Coons does on the issue of the circuit, and I would like to express those. But before turning to that, I also want to have an opportunity to do what I do frequently, kind of set the record straight by what I think is a misreading of our actions on the

court, and it probably goes back to—on the courts generally—or nominees, I should say. It goes back to something I said to the President after he spoke to our Republican caucus about three weeks ago, and he brought up about judges. And when he shook my hand, I said, “Do you mean you are not really satisfied that we have approved 178 of your nominees and only disapproved of two?”

And then I brought up that we always get from the other side of the aisle complaints about not moving fast enough. And I said, “Do you realize out of, I think at that time, maybe about 85 vacancies that there are, that there are 65 that we do not even have the nominations for? Do you realize that we cannot work on your nominees unless you get them up here?” He says, “Well, I think I will have to talk to my Democratic colleagues to get the names of their district judges up sooner.”

So that is where I am coming from in the statement I am going to read at this point.

There are a number of individuals from the press here today. Based on what I have been reading, there appears to be some confusion about facts, so I want to take a couple of minutes to go over these.

Yesterday, the Senate confirmed yet another judicial nominee. That was the tenth judicial nominee was confirmed so far this year, including four circuit court nominees. To put that in perspective, as of today’s date in 2005—so this would be a comparable time in the previous Presidency—we had confirmed zero judicial nominees. So, once again, yesterday we confirmed the tenth judicial nominee this year. As of April 10, 2005, the Senate had confirmed zero of President Bush’s nominees, and a 10–0 record is one that any President should be proud of.

Those ten nominees are on top of the near record-setting 112th Congress. During that Congress, we confirmed 111 of President Obama’s judicial nominees. We have to go back 20 years to find a more productive Congress.

So today we have confirmed a total of 181 of President Obama’s judicial nominees, 171 during the first time and 10 so far this term.

During the same time, the Senate has defeated only two nominees. That record now, three weeks passing from the previous figures I gave you, is 181 with two disapprovals. Stated another way, the President has a batting average of .989. I do not know how any President could complain about that kind of an average.

Finally, on this subject, I would note that we hear a lot about the vacancy rates. There are currently 86 vacancies for federal courts, but, of course, you never hear the President mention the 62 vacancies that have no nominees that we cannot possibly act upon in the U.S. Senate until they get up here. This is because—and those 62 vacancies represent about 75 percent of the total vacancies.

So, to sum up, whether you consider the 10–0 record we have set up so far or the record-setting 112th Congress or the overall record of 181–2, the Senate has been doing its job and doing it quickly. In fact, there is only one record this President should not be proud of, and that is the record he controls, namely, 62 vacancies that have no nominee.

Now I would turn to the second point that Senator Coons brought up, discussing the DC Circuit. As most of my colleagues know—and my participation in this goes back to the early 1990s when I was on the only court study committee that the Congress has ever set up to review the activities of the court, so this has been something that has been on my mind for a long time.

As most of my colleagues know, the DC Circuit is the least busy circuit in the country. In fact, it ranks last or almost last in nearly every category that measures workload. Based on the 2012 statistics from the Administrative Office of the U.S. Courts, the District Circuit has the fewest number of appeals filed per authorized judgeship with 108. By way of comparison, the Eleventh Circuit ranks with over five times as many appeals filed per authorized judgeship with 583. We have a chart here that shows that.

Likewise, the DC Circuit has the fewest appeals terminated per authorized judgeship with 108. By way of comparison, the Eleventh Circuit ranks first with 540 appeals terminated per authorized judgeship. The Second Circuit has the second highest number of appeals terminated per authorized judgeship with 440. And, again, this is four times as many appeals terminated per judgeship than the DC Circuit.

The same is true for appeals pending per authorized judgeship in 2012. The DC Circuit has 120 appeals pending per judgeship, which is essentially tied with the Tenth Circuit for the least number of appeals pending per judgeship. By contrast, the Second and Eleventh Circuits have 343 and 323 appeals pending per judgeship.

Now, given this imbalance in workload, today I am introducing the *Court Efficiency Act*. A number of my colleagues are cosponsoring the legislation: Senators Hatch, Sessions, Graham, Cornyn, Lee, Cruz, and Flake. The legislation is very straightforward. It would add a seat to the Second and the Eleventh Circuit. At the same time it would reduce the number of authorized judgeships for the DC Circuit from 11 to 8. If adopted, this legislation would be a significant step forward recognizing disparities between the DC Circuit, the Second, and the Eleventh.

Now, I want to make sure that everyone understands what this legislation would do or would not do.

First of all, the legislation would not impact the seat of today's nominee. Today's nominee has been nominated to the eighth seat in the DC Circuit, and this legislation would reduce the total number of seats on the DC Circuit from 11 to 8. So, again, this legislation would have no impact on today's nominee.

Second, it is important to note that the legislation would take effect upon enactment, meaning legislation introduced in the Senate altering the number of judgeships has often been postponed of enactment until the beginning of the next President's term. Our legislation does not do this. Instead, we have drafted the legislation to take effect immediately. As a result, President Obama would still have the opportunity to make two of these appointments. The only difference is that those appointments would be to the Second and the Eleventh Circuit, where they are needed, rather than to the DC Circuit, where they are clearly not needed.

Finally, I would note that this legislation would save taxpayers' dollars. Last Congress, the Congressional Budget Office scored leg-

islation that would have created a number of new district judgeships. The CBO concluded that the costs associated with those new judgeships would be approximately \$1 million per year. We do not have the score from the Congressional Budget Office for this bill, but it would certainly be a cost saver. So I urge my colleagues to support this legislation.

Thank you very much for your consideration of my time that I—

Chairman LEAHY. Well, if I just might note, Mr. Chairman, I appreciate the Senator's concern about getting judges through. There are 13 or 14 pending on the Senate floor right now, almost all of which came out of this Committee unanimously. I would hope that his concern about getting those vacancies filled would mean that we could get them all confirmed this week. We move them very quickly here.

I would also note that, of course, it is all in the eye of the beholder. The DC Circuit has a caseload per active judge of 188 pending appeals, not the number shown. And the other thing is when it had less of a caseload but a Republican President, the Republicans fought very much to make sure we confirmed a number of President Bush's nominations.

So I do not want to suggest that these numbers show any kind of a partisan difference, but we appear to need the judges with less of a caseload when there is a Republican President. The suggestion is we do not need the judges when there is a Democratic President. And I would also note that if we are concerned about vacancies, we could easily confirm all of these noncontroversial judges that are on the floor. They have been held up for month after month after month after month after month.

So, with that, wearing my hat in another Judiciary matter, I will leave, but I know the most important thing is to hear from the nominee. And I look forward to seeing that transcript. Thank you. And I will submit questions for the record.

[The questions of Chairman Leahy appear as a submission for the record.]

Senator GRASSLEY. Could I please have 15 seconds?

Number one, I would like to say when we moved a seat from DC to California, that was in the Bush administration. And I have no hold on any judge that is now on the calendar.

Thank you.

Chairman LEAHY. Well, every single Democrat has agreed to move in the next hour, if they want, on all the judges. The hold, unfortunately, is from the Republican side, but I have found the Senator from Iowa to always be very truthful to me, so I assume he is not the one with a hold, but he may want to talk to the people on his side of the aisle.

Senator COONS. I am grateful for the opportunity to proceed to hear from our nominee. I was pleased that the Third Circuit nominee, Patty Shwartz, was recently confirmed, and it is my hope that at the conclusion of today's hearing, we can come to a shared consensus that Mr. Srinivasan would make an excellent member of the DC Circuit.

So I would like to invite our nominee, Mr. Srinivasan, to stand. If you would and repeat after me—this is customary for this Com-

mittee. Please raise your right hand and repeat after me. Do you solemnly swear that the testimony you are about to give to this Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SRINIVASAN. I do.

Senator COONS. Thank you. Please be seated, and let the record show the nominee has answered in the affirmative.

I would like, if I might briefly at the outset, simply to recognize that five Members of the House were also here to lend their support to Mr. Srinivasan's nomination: Members of Congress Judy Chu, Ami Bera, and Mike Honda of California, Tulsi Gabbard of Hawaii, and Grace Meng.

I would like to invite—Mr. Srinivasan, you are free to deliver either an opening statement or also to welcome and recognize any friends and family who are with you here today.

**STATEMENT OF SRI SRINIVASAN, NOMINEE TO BE CIRCUIT  
JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT**

Mr. SRINIVASAN. Thank you very much, Mr. Chairman. I do not have an opening statement, but with the Committee's indulgence, I would like to introduce some people and express some gratitude.

Thanks to you and the Committee for convening this hearing. It is a high honor to be here today.

I want to thank the Congressmen and Congresswomen who were here earlier. I appreciate their presence as well.

I would like to thank Senators Warner and Kaine for their exceptionally gracious opening remarks. I think one can ask for no more than to have remarks like that heard about oneself in the presence of one's mother.

[Laughter.]

Mr. SRINIVASAN. And so I got to live that today, which is a wonderful thing.

I would like to thank many people who are here today, if I might as well. There are scores of friends from my boyhood days in Kansas to present day and colleagues, both past and present, who are here, and I am really deeply appreciative of their presence, particularly given the busy schedules that they all have.

I would like to thank some extended family who are here as well. They, as well as friends and former colleagues, have traveled quite a great distance to be here.

And I would like to introduce my immediate family who is here, if I might, to the Committee.

My sisters Srija and Srinija are here, and I think anyone who knows them and anyone who sees them today will appreciate that they got a disproportionately favorable allocation of my parents' gene pool. But I have grown accustomed to that over the course of decades, and I am comfortable with it.

My brother-in-law, Brad Joondeph, who is Srija's husband, is here, my former law school classmate and former moot court partner; their son, Akhil, is here. Wonderful to have you here.

I would like to pay deep respects to my mother, Saroja, who is here with us today. My father, unfortunately, cannot be for health reasons, but we all know that he is here with us in spirit.

And last, and most, I would like to introduce the Committee to my twins, Maya and Vikram, and I will say Vikram and Maya as well so they both to get to be mentioned first.

[Laughter.]

Mr. SRINIVASAN. They are the lights of my life, and they are going to have to exhibit a great deal of patience today. But I will give them a message that their patience, if it is manifested in the right way, will be rewarded with toys and treats to be negotiated later.

[Laughter.]

Mr. SRINIVASAN. With that, thank you very much, and I look forward to answering your questions.

[The biographical information of Mr. Srinivasan follows:]

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).

Srikanth Srinivasan

Names also used: Sri Srinivasan, Padmanabhan Srikanth Srinivasan, P. Srikanth Srinivasan

2. **Position:** State the position for which you have been nominated.

United States Circuit Judge for the District of Columbia Circuit

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Office of the Solicitor General  
Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Residence: Arlington, Virginia

4. **Birthplace:** State year and place of birth.

1967; Chandigarh, India

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1991 – 1995, Stanford Law School; J.D., 1995

1992 – 1995, Stanford Graduate School of Business; M.B.A., 1995

1985 – 1989, Stanford University; B.A., 1989

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation



from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2011 – present  
Office of the Solicitor General  
Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530  
Principal Deputy Solicitor General

2007 – 2011  
O'Melveny & Myers LLP  
1625 Eye Street, NW  
Washington, DC 20006  
Partner

2010 – 2011  
Harvard Law School  
1563 Massachusetts Avenue  
Cambridge, Massachusetts 02138  
Lecturer on Law

2002 – 2007  
Office of the Solicitor General  
Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530  
Assistant to the Solicitor General

1998 – 2002  
O'Melveny & Myers LLP  
1625 Eye Street, NW  
Washington, DC 20006  
Associate (1998 – 2002)  
Counsel (2002)

1997 – 1998  
Supreme Court of the United States  
1 First Street, NW  
Washington, DC 20543  
Law Clerk to Justice Sandra Day O'Connor

1996 – 1997  
Office of the Solicitor General  
Department of Justice  
950 Pennsylvania Avenue, NW

Washington, DC 20530  
Bristow Fellow

1995 – 1996  
United States Court of Appeals for the Fourth Circuit  
255 West Main Street  
Charlottesville, Virginia 22902  
Law Clerk to Judge J. Harvie Wilkinson III

Summer 1995  
King & Spalding LLP  
1700 Pennsylvania Avenue, NW, Suite 200  
Washington, DC 20006  
Summer Associate

Summer 1994  
Office of the Solicitor General  
Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530  
Summer Law Intern

Summer 1994  
Hogan & Hartson LLP  
555 13th Street, NW  
Washington, DC 20004  
Summer Associate

Summer 1993  
Miller, Cassidy, Larrocca & Lewin  
2555 M Street, NW  
Washington, DC 20037  
Summer Associate

Summer 1992  
Stinson, Mag & Fizzell  
1201 Walnut Street  
Kansas City, Missouri 64141  
Summer Associate

Summer 1992  
O'Melveny & Myers LLP  
275 Battery Street  
San Francisco, California 94111  
Summer Associate

1989 – 1992  
 San Mateo County Manager's Office  
 401 Marshall Street  
 Redwood City, California 94063  
 Independent Consultant (1991 – 1992)  
 Management Analyst (1989 – 1991)

Other Affiliations (uncompensated):

2010 – 2011  
 Washington Lawyers' Committee for Civil Rights and Urban Affairs  
 11 Dupont Circle, NW  
 Washington, DC 20036  
 Board of Directors

2010 – 2011  
 Stanford University Law School  
 Crown Quadrangle  
 559 Nathan Abbott Way  
 Stanford, California 94305  
 Board of Visitors

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I have registered for the selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

500 Leading Lawyers in America, LawDragon (2010 – 2011)

Leading Lawyer, Appellate and Supreme Court Practice, Chambers USA and Legal 500 (2010 – 2011)

Cornerstone Award, North American South Asian Bar Association (2009)

Distinguished Professional Award, South Asian Bar Association of Connecticut (2009)

50 Most Influential Minority Lawyers in America, National Law Journal (2008)

Award for Excellence, Office of the Secretary of Defense (2005)

Attorney General's Award for Excellence in Furthering U.S. National Security (2003)

Order of the Coif, Stanford Law School (1995)

Distinction, Stanford Law School (1995)

Matteson Sr. Award for best team, Cummings Award for best brief, Marion Rice Kirkwood Moot Court Competition, Stanford Law School (1994)

Note Editor, Stanford Law Review (1993 – 1994)

Honors, Stanford University (1989)

Distinction, Stanford University (1989)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association (2001 – 2002)

American Bar Association Standing Committee on the Federal Judiciary  
Practitioners' Reading Group (2009)

American Inns of Court, Edward Coke Appellate Inn of Court  
Barrister (approx. 2009 – present)  
Associate (approx. 2005 – 2009)

National Asian Pacific American Bar Association (2010 – 2011)

North American South Asian Bar Association  
National Advisory Council (2009 – 2011)

Supreme Court Institute, Georgetown University Law Center  
Outside Advisory Board (2010 – 2011)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

District of Columbia (2001)  
California (1999) (inactive)

There have been no lapses in membership, although as indicated, my membership in California is inactive.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States (2003)  
 United States Court of Appeals for the District of Columbia Circuit (2010)  
 United States Court of Appeals for the Second Circuit (2009)  
 United States Court of Appeals for the Third Circuit (2002)  
 United States Court of Appeals for the Fifth Circuit (2010)  
 United States Court of Appeals for the Eighth Circuit (2008)  
 United States Court of Appeals for the Ninth Circuit (2008)  
 United States Court of Appeals for the Tenth Circuit (2008)  
 United States Court of Appeals for the Eleventh Circuit (2010)  
 United States Court of Appeals for the Federal Circuit (2009)  
 United States District Court for the Eastern District of California (2000)  
 United States District Court for the Central District of California (2010)

There have been no lapses in membership.

**11. Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Stanford University Law School  
 Board of Visitors (2010 – present)

Stanford University Leading Matters  
 Washington DC Co-Chair (2010)

Washington Lawyers' Committee for Civil Rights and Urban Affairs  
 Board of Directors (2010 – 2011)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical

implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed in response to 11a currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin.

**12. Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

*Business, the Roberts Court, and the Solicitor General: Why the Supreme Court's Recent Business Decisions May Not Reveal Very Much* (with Bradley Joondeph), 49 Santa Clara L. Rev. 1103 (2009). Copy supplied.

*Election Burden: Indiana's Voter ID Law is Harmful and Worthless* (with Walter Dellinger), [www.slate.com](http://www.slate.com) (Jan. 8, 2008). Copy supplied.

*Incidental Restrictions of Speech and the First Amendment: A Motive-Based Rationalization of the Supreme Court's Jurisprudence*, 12 Constitutional Commentary 401 (Winter 1995). Copy supplied.

Note, *Capital Sentencing Doctrine and the Weighing-Nonweighing Distinction*, 47 Stan. L. Rev. 1347 (1995). Copy supplied.

Note, *College Financial Aid and Antitrust: Applying the Sherman Act to Collaborative Nonprofit Activity*, 46 Stan. L. Rev. 919 (1994). Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

I served on the Practitioners' Reading Group for the ABA's Standing Committee on the Federal Judiciary in 2009. Members of this reading group review writings of U.S. Supreme Court nominees and draft confidential memoranda for the Standing Committee regarding these nominees.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal

interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

The following list reflects my best efforts to identify any communications to public bodies or public officials on matters of public policy or legal interpretation that I issued or provided or that others presented on my behalf. To compile this list, I searched my own records and Internet sources.

Joint letter to Senate Judiciary Committee supporting nomination of Edward DuMont to become a judge on the United States Court of Appeals for the Federal Circuit (Mar. 22, 2011). Copy supplied.

Joint letter to Senate Judiciary Committee supporting nomination of Caitlin Halligan to become a judge on the United States Court of Appeals for the District of Columbia Circuit (Mar. 4, 2011). Copy supplied.

Joint letter to Senate Judiciary Committee supporting nomination of Caitlin Halligan to become a judge on the United States Court of Appeals for the District of Columbia Circuit (Feb. 28, 2011). Copy supplied.

Joint letter to Senate Judiciary Committee supporting nomination of Donald Verrilli to become Solicitor General (Feb. 10, 2011). Copy supplied.

Joint letter to Senate Judiciary Committee supporting nomination of Elena Kagan to become an Associate Justice of the Supreme Court (June 25, 2010). Copy supplied.

Letter to Senate Judiciary Committee supporting nomination of Raymond Kethledge to become a judge on the United States Court of Appeals for the Sixth Circuit (Jan. 22, 2008). Copy supplied.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

The following list reflects my best efforts to identify the speeches or talks that I have delivered. To compile this list, I searched my own records, my time records while at O'Melveny & Myers, and Internet sources. There may, however, be other speeches or talks that I have been unable to recall or identify, and I have spoken occasionally at informal events and generally did not retain records of

those events. When giving speeches or talks, I often spoke without notes or outlines, and on those occasions in which I prepared notes or an outline, I generally did not retain them.

June 19, 2012: Remarks to district court and court of appeals law clerks about the Office of the Solicitor General, United States District Court for the District of Columbia, Washington, DC. I have no notes, transcript, or recording. The address of the District Court is 333 Constitution Avenue, NW, Washington, DC 20001.

May 7, 2012: Panelist: Supreme Court Review, Fifth Circuit Judicial Conference, Santa Fe, NM. My notes are supplied.

April 16, 2012: Remarks to law students from Roger Williams University School of Law about the Office of the Solicitor General, Washington, DC. I have no notes, transcript, or recording, but RWU coverage is supplied. The address of RWU School of Law is 10 Metacom Avenue, Bristol, RI 02809.

February 18, 2012: Keynote Address for Annual Conference, North American South Asian Law Students Association, NYU Law School. My remarks generally concerned the accomplishments and status of South Asian lawyers in the profession. I have no notes, transcript, or recording. NASALSA can be contacted through its President, Hiral Zalavadia, 27880 Mount Hood Way, Yorba Linda, CA 92887.

January 19, 2012: Remarks to law students from Harvard Law School Supreme Court Clinic about the Office of the Solicitor General. I have no notes, transcript, or recording. The address of Harvard Law School is 1563 Massachusetts Avenue, Cambridge, MA 02138.

January 5, 2012: Panelist, "Reflections on the Office of the Solicitor General," Pepperdine University School of Law event at the Association of American Law Schools Annual Meeting, Washington, DC. I have no notes, transcript, or recording. The address of Pepperdine University School of Law is 24255 Pacific Coast Highway, Malibu, CA 90263.

October 10, 2011: Remarks to law students from Stanford University Law School Supreme Court Clinic about the Office of the Solicitor General. I have no notes transcript, or recording. The address of Stanford Law School is Crown Quadrangle, 559 Nathan Abbott Way, Stanford CA 94305.

September 21, 2011: Keynote Address for Awards and Installation Dinner, Asian Pacific American Bar Association of DC, Washington, DC. I have no notes, transcript, or recording, but APABA-DC coverage is supplied. The address of APABA-DC is P.O. Box 27223, Washington, DC 20038.



September 9, 2011: Remarks to students from Berkeley Law School, University of California, Business Organizations class, on *Hertz v. Friend*. I have no notes, transcript, or recording. The address of Berkeley Law School, University of California, is 215 Boalt Hall, Berkeley, CA 94270.

June 25, 2011: Panelist, "Supreme Court Term Review," North American South Asian Bar Association, Annual Convention, Los Angeles, CA. I have no notes, transcript, or recording. NASABA can be contacted through its President, Jolsna John, 1620 South Loop Road, Alameda, CA 94502.

June 17, 2011: Panelist, "Appellate Advocacy 2011, How to be an Effective Appellate Advocate," Practising Law Institute, New York, NY. I have no notes, transcript, or recording. I understand that the only recording available is in an online, streaming format and therefore cannot be downloaded or otherwise produced to the Committee. It is available for purchase online at [http://www.pli.edu/Content/OnDemand/Appellate\\_Advocacy\\_2011\\_How\\_To\\_Be\\_An\\_Effective/\\_N-1z140puZ4n?ID=145099](http://www.pli.edu/Content/OnDemand/Appellate_Advocacy_2011_How_To_Be_An_Effective/_N-1z140puZ4n?ID=145099). The address of PLI is 810 Seventh Avenue, 21st Floor, New York, NY 10019.

June 15, 2011: Panelist, "Supreme Court Update," Sixth Circuit Judicial Conference, Acme, MI. I have no notes, transcript, or recording. The address of the Sixth Circuit is 540 Potter Stewart U.S. Courthouse, 100 East Fifth Street, Cincinnati, OH 45202.

April 15, 2011: Panelist, "The Changing Supreme Court," American Bar Association, Annual Section of Litigation CLE Conference, Miami, FL. I have no notes, transcript, or recording. The address of the ABA is 321 North Clark Street, Chicago, IL 60654.

February 17, 2011: Remarks to employees of Department Homeland Security, U.S. Citizenship and Immigration Services (DHS CIS), on Supreme Court advocacy and Supreme Court Term. I have no notes, transcript, or recording. The address of DHS CIS is 111 Massachusetts Avenue, NW, Washington, DC 20529.

December 3, 2010: Panelist, Supreme Court Preview, District of Columbia Superior Court, Washington, DC. I have no notes, transcript, or recording. The address of the District of Columbia Superior Court is 500 Indiana Avenue, NW, Washington, DC 20001.

December 2, 2010: Panelist, "Amicus Briefs in the Supreme Court," National Association of Attorneys General, Washington, DC. I have no notes, transcript, or recording. The address of the NAAG is 2030 M Street, NW, 8th Floor, Washington, DC 20036.

December 1, 2010: Lecture, "Supreme Court Advocacy in Statutory Interpretation Cases," Duke University Law School, Durham, NC. Video recording supplied.

November 22, 2010: Panelist, "Briefing on *Chamber of Commerce v. Whiting*," American Constitution Society, Washington, DC. Video available at <http://www.c-spanvideo.org/program/Arizonalmmi>, and press coverage is supplied.

November 20, 2010: Panelist, "Advocacy at its Finest—Rearguing *United States v. Wong Kim Ark*;" and "Judicial Clerkships," National Asian Pacific American Bar Association, Annual Convention, Los Angeles, CA. I have no notes, transcript, or recording. The address of NAPABA is 1612 K Street, NW, Suite 1400, Washington, DC 20006.

November 13, 2010: Introduction of Professor Henry Greeley, Stanford University Leading Matters, Washington DC. I have no notes, transcript, or recording. The address of the Stanford Alumni Association is Arrillaga Alumni Center, 326 Galvez Street, Stanford, CA 94305.

October 8, 2010: Panelist, "The Finest Legal Mind, A Symposium in Celebration of Justice John Paul Stevens," Georgetown Law School, Washington, DC. Video available at <http://www.c-spanvideo.org/program/295896-2>.

August 7, 2010: Panelist, "Supreme Court Term Review," American Bar Association, Annual Meeting, San Francisco, CA. I have no notes, transcript, or recording. The address of the ABA is 321 North Clark Street, Chicago, IL 60654.

July 7, 2010: Panelist, "Sizing Up the Supreme Court's Term," National Law Journal, Georgetown Law School, Washington, DC. Partial transcript and press coverage supplied.

June 25, 2010: Panelist, "Supreme Court Term Review," North American South Asian Bar Association, Boston, MA. I have no notes, transcript, or recording. NASABA can be contacted through its President, Jolsna John, 1620 South Loop Road, Alameda, CA 94502.

June 24, 2010: Panelist, "The Supreme Court Review," Federal Circuit Bar Association, 12th Annual Bench and Bar Conference, Colorado Springs, CO. I have no notes, transcript or recording. The address of the FCBA is 1620 I Street, NW, Suite 801, Washington, DC 20006.

June 23, 2010: Panelist, "Media Briefing: Annual Supreme Court Review," Chamber of Commerce, Washington, DC. I have no notes, transcript, or recording, but press coverage is supplied. The address of the Chamber of Commerce is 1615 H Street, NW, Washington, DC 20062.

May 18, 2010: Panelist, "Supreme Court Nominee Elena Kagan, The Senate Confirmation Process and a Justice Kagan's Potential Impact on the Court," Georgetown Law School, Washington, DC. Video recording supplied.

April 27, 2010: Keynote, "A View of the Supreme Court," South Asian Bar Association of Washington, DC. I have no notes, transcript, or recording, but SABA-DC coverage is supplied. SABA-DC can be contacted through its President, A.J. Dhaliwal, 1301 North Courthouse Street, #816, Arlington, VA 22201.

April 20, 2010: Panelist, "*Hertz v. Friend*, A Defense Victory and a Tool for Avoiding Plaintiff-Friendly Jurisdictions," Defense Resource Institute, Chicago, IL. I have no notes, transcript, or recording. The address of the DRI is 55 West Monroe, Suite 2000, Chicago, IL 60603.

March 17, 2010: Remarks to students at Georgetown Law School, Statutory Interpretation class, on *Hertz v. Friend*. I have no notes, transcript, or recording. The address of Georgetown Law School is 600 New Jersey Avenue, NW, Washington, DC 20001.

March 10, 2010: Introduction of Honoree Preet Bharara, United States Attorney for the Southern District of New York, South Asian Bar Association of New York, New York, NY. I have no notes, transcript, or recording. The address of SABANY is P.O. Box 1057, New York, NY 10163.

March 4, 2010: Remarks to students at Georgetown Law School, Appellate Advocacy class, on Supreme Court oral advocacy. I have no notes, transcript, or recording. The address of Georgetown Law School is 600 New Jersey Avenue, NW, Washington, DC 20001.

December 2, 2009: Panelist, "Supreme Court Oral Argument," National Association of Attorneys General, Washington, DC. I have no notes, transcript, or recording. The address of the NAAG is 2030 M Street, NW, 8th Floor, Washington, DC 20036.

November 25, 2009: Remarks to students at Santa Clara Law School, Supreme Court seminar, on the Office of the Solicitor General and Supreme Court advocacy. I have no notes, transcript, or recording. The address of Santa Clara Law School is 500 El Camino Real, Santa Clara, CA 95053.

October 30, 2009: Remarks to students at the University of Virginia Law School, Supreme Court seminar, on *Horne v. Flores*. I have no notes, transcript, or recording. The address of the University of Virginia Law School is 580 Massie Road, Charlottesville, VA 22903.

October 17, 2009: Panelist, "Supreme Court Clerkships," Annual Robert E. Wone Judicial Clerkship and Internship Conference, American University School of Law, Washington, DC. Video available at [http://www.wcl.american.edu/secle/video\\_2009.cfm](http://www.wcl.american.edu/secle/video_2009.cfm). My panel appears in Part 5.

October 5, 2009: Remarks at alumni event for Pepperdine University School of Law, hosted by O'Melveny & Myers, Washington, DC. I have no notes, transcript, or recording, but university coverage is supplied. The address of Pepperdine School of Law is 24255 Pacific Coast Highway, Malibu, CA 90263.

September 24, 2009: Keynote Address, South Asian Bar Association of Connecticut Annual Banquet, Hartford, CT. I have no notes, transcript, or recording. The address of the South Asian Bar Association of Connecticut is P.O. Box 230436, Hartford, CT 06123.

June 26, 2009: Panelist, "Appellate Advocacy," North American South Asian Bar Association, Annual Convention, Vancouver, Canada. I have no notes, transcript, or recording. NASABA can be contacted through its President, Jolsna John, 1620 South Loop Road, Alameda, CA 94502.

April 30, 2009: Panelist, "Appellate Briefwriting," American Bar Association, Section of Litigation Annual Conference, Atlanta, GA. I have no notes, transcript, or recording. The address of the ABA is 321 North Clark Street, Chicago, IL 60654.

April 8, 2009: Remarks to students at Georgetown Law School, Statutory Interpretation class, on *Zuni Public School District v. Department of Education*. I have no notes, transcript, or recording. The address of Georgetown Law School is 600 New Jersey Avenue, NW, Washington, DC 20001.

January 23, 2009: Panelist, "Big Business and the Roberts Court," Santa Clara Law School, Santa Clara, CA. I co-authored the paper, *Business, the Roberts Court, and the Solicitor General*, for this event and it is supplied in response to 12(a). Press coverage of the event is also supplied.

November 5, 2008: Panelist, "A Discussion of the Supreme Court's Coming Term and Highlights from the Court's Last Term," O'Melveny & Myers LLP, Century City, CA. I have no notes, transcript, or recording. The address of O'Melveny & Myers' Century City office is 1999 Avenue of the Stars, Los Angeles, CA 90067.

October 29, 2008: Panelist, "Preemption, Examining the Current Viability of the Defense in Auto Product Liability Cases," American Conference Institute, Chicago, IL. I have no notes, transcript, or recording. The address of the ACI is 45 West 25th Street, 11th Floor, New York, NY 10010.

September 25, 2008: Lecture, "Review of Recent Supreme Court Employment Decisions," Federation of Defense and Corporate Counsel, Corporate Counsel Symposium, Dallas, TX. I have no notes, transcript, or recording. The address of the FDCC is 11812 North 56th Street, Tampa, Florida 33617.

September 16, 2008: Panelist, "Previewing the October 2008 Supreme Court Term," Washington Legal Foundation, Washington, DC. Video available at <http://iiscast.wlf.org/vod/2appellateexpertstop001/archiveA.html>.

April 17, 2008: Panelist, "Separate but Equal—The Clash Between the President and Congress Over the Power to Wage War," American Bar Association, Section of Litigation Annual Conference, Washington, DC. I have no notes, transcript, or recording. The address of the ABA is 321 North Clark Street, Chicago, IL 60654.

September 28, 2007: Panelist, "Federal Preemption of State Law, An Increasing Trend?," Appellate Judges Education Institute, Annual Summit, Washington, DC. I have no notes, transcript, or recording, but ABA Council of Appellate Lawyers coverage is supplied. The AJEI is cosponsored by the American Bar Association, 321 North Clark Street, Chicago, IL 60654, and the SMU Dedman School of Law, 3315 Daniel Avenue, Dallas, TX 75205.

June 17, 2005: Panelist, "Litigation in the War on Terror," North American South Asian Bar Association, 2005 Annual Convention, Washington, DC. I have no notes, transcript, or recording. NASABA can be contacted through its President, Jolsna John, 1620 South Loop Road, Alameda, CA 94502.

December 1, 2004: Panelist, "Arguing Attorneys in the Supreme Court," National Association of Attorneys General, Washington, DC. I have no notes, transcript, or recording. The address of the NAAG is 2030 M Street, NW, 8th Floor, Washington, DC 20036.

February 4, 2001: Panelist, "Practical Implications – The Effect of the Supreme Court's Federalism Decisions on Litigation and Lawmaking," for the Shifting the Balance of Power: The Supreme Court, Federalism, and State Sovereign Immunity Conference, Stanford Law Review, Palo Alto, CA. I have no notes, transcript, or recording. The address of the Stanford Law Review is Crown Quadrangle, 559 Nathan Abbott Way, Stanford, CA 94305.

May 28, 1985: Commencement Speaker, Lawrence High School, Lawrence, KS. A reprint of the address is supplied.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

The following list reflects my best efforts to identify the interviews I have given to newspapers, magazines, or other publications, or radio or television stations. To compile this list, I searched my own records and Internet sources.

Martin Bricketto, *Pro Bono Firm of 2011: O'Melveny & Myers*, Law360.com (July 20, 2011). Copy supplied.

Tony Mauro, *Diversity on High*, National Law Journal (June 6, 2011) (reprinted in multiple outlets). Copy supplied.

Press release, *O'Melveny Appoints Sri Srinivasan Chair of Appellate Practice*, O'Melveny & Myers (May 12, 2011) (quotes reprinted in multiple outlets). Copy supplied.

David Bario, *Supreme Court to Decide Whether Federal Law Trumps Credit Card Companies' Arbitration Agreements*, American Lawyer (May 2, 2011). Copy supplied.

Bibeka Shrestha, *Rising Star: O'Melveny & Myers' Matt Shors*, Law360.com (Mar. 16, 2011). Copy supplied.

Ryan Davis, *Appellate Group of the Year: O'Melveny*, Law360.com (Jan. 26, 2011). Copy supplied.

Greg Stohr, *'Business Death Penalty' for Hiring Illegal Aliens Unites Obama Companies*, Bloomberg.com (Dec. 8, 2010). Copy supplied.

Robert Barnes and Laura Stanton, *20 Questions*, Washington Post (Sept. 6, 2010) (I am not quoted, but I was interviewed in connection with this article). Copy supplied.

Jess Bravin, *Judging the Justices: Some Statistics From 2009-10 Oral Arguments*, Wall Street Journal Blog (July 19, 2010). Copy supplied.

Tony Mauro, *Appellate Lawyer of the Week*, National Law Journal (June 30, 2010). Copy supplied.

Tony Mauro, *Brief of the Week: Weyhrauch v. U.S.*, National Law Journal (June 30, 2010). Copy supplied.

Kimberly Atkins, *Prosecutors' Tool Loses Some of its Power: Supreme Court 'Honest Services' Ruling Narrows Limits of Law*, Lawyers Weekly USA (June 28, 2010) (reprinted in multiple outlets). Copy supplied.

Tony Mauro, *Washington's Most Influential Women Lawyers*, National Law Journal (June 28, 2010). Copy supplied.

Kimberly Atkins, *Commentary: The Quick, the Chatty, and the Silent*, Lawyers Weekly USA (June 24, 2010). Copy supplied.

Press release, *O'Melveny Secures Unanimous US Supreme Court Decision in Significant Immigration Case*, O'Melveny & Myers (June 14, 2010). Copy supplied.

Kimberly Atkins, *The Most Polite Justice of the U.S. Supreme Court, Justice John Paul Stevens*, Lawyers Weekly USA (Apr. 14, 2010). Copy supplied.

Tony Mauro, *Srinivasan's Star Rising at the Supreme Court*, Blog of Legal Times (Feb. 26, 2010). Copy supplied.

Andrew Longstreth, *Litigator of the Week: Sri Srinivasan of O'Melveny & Myers*, American Lawyer (Feb. 25, 2010). Copy supplied.

Marcia Coyle, *Supreme Court Establishes 'Nerve Center' Test for Corporate Jurisdiction*, Corporate Counsel (Feb. 24, 2010) (reprinted in multiple outlets). Copy supplied.

Hilary Russ, *Supreme Court Simplifies Place of Business Rule*, Law360.com (Feb. 23, 2010). Copy supplied.

Press release, *O'Melveny Wins Unanimous Supreme Court Ruling for Hertz Corp.*, O'Melveny & Myers (Feb. 23, 2010). Copy supplied.

Marcia Coyle, *Home Court Showdown*, National Law Journal (Nov. 9, 2009) (reprinted in multiple outlets). Copy supplied.

Lawrence Hurley, *High Court Ruling Shapes Local Control*, Daily Journal (July 24, 2009). Copy supplied.

*High Court Eases Oversight of English Program*, National Public Radio, All Things Considered (June 25, 2009). Transcript supplied.

Press release, *O'Melveny Secures Unanimous US Supreme Court Victory*, O'Melveny & Myers (May 27, 2009). Copy supplied.

*Supreme Court Hears Case on English in Schools*, National Public Radio (Apr. 20, 2009). Transcript supplied.

Press release, *Former Assistant to Solicitor General of the U.S. Rejoins DC Office of O'Melveny*, O'Melveny & Myers (Oct. 29, 2007). Copy supplied.

*Srikanth Srinivasan Creates History*, India Abroad (Mar. 21, 2003). Copy supplied.

*He Looks Like a Potential Supreme Court Justice*, India Abroad (Mar. 21, 2003). Copy supplied.

Ric Anderson, *LHS Grad to Clerk for High Court Justice*, Lawrence Journal-World (Mar. 12, 1996). Copy supplied.

Gary Bedore, *Powerful Bulldogs Advance*, Lawrence Journal-World (Mar. 9, 1985). Available at <http://tinyurl.com/powerfulbulldogs>.

Gary Bedore, *Lions Gear Up for Sub-State This Thursday*, Lawrence Journal-World (Feb. 25, 1985). Available at <http://tinyurl.com/srilions>.

Gary Bedore, *Lions Wake Up, Slug Northwest*, Lawrence Journal-World (Jan. 26, 1985). Available at <http://tinyurl.com/lionswakeup>.

Gary Bedore, *Athletics is Spice of Life for Srinivasan*, Lawrence Journal-World (Jan. 17, 1985). Available at <http://tinyurl.com/sriathletics>.

Gary Bedore, *Lions Ride 4-Game Win Streak into Topeka Event*, Lawrence Journal-World (Jan. 14, 1985). Available at <http://tinyurl.com/lionsride>.

Gary Bedore, *Stevens' Clutch Charities Carry Lions by Leavenworth, 55-54*, Lawrence Journal-World (Jan. 12, 1985). Available at <http://tinyurl.com/sristevens>.

Gary Bedore, *Lions Shoot for First Win versus West*, Lawrence Journal-World (Dec. 13, 1984). Available at <http://tinyurl.com/srillionsshoot>.

Gary Bedore, *Wyandotte Drops Lions in Overtime, 69-64*, Lawrence Journal-World (Dec. 10, 1984). Available at <http://tinyurl.com/wyandottedrops>.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held any judicial office.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? \_\_\_\_\_
  - i. Of these, approximately what percent were: \_\_\_\_\_



jury trials:	_____ %
bench trials:	_____ % [total 100%]
civil proceedings:	_____ %
criminal proceedings:	_____ % [total 100%]

- b. Provide citations for all opinions you have written, including concurrences and dissents.
  - c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
  - d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
  - e. Provide a list of all cases in which certiorari was requested or granted.
  - f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
  - g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
  - h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
  - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have never been a judge.

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held any public offices. I have not had any unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Although not directly responsive to this question, I was part of the legal team, which included partners at my law firm, working for then-Vice President Gore in connection with the litigation surrounding the results in Florida of the 2000 Presidential election. My role consisted principally of researching legal issues and drafting sections of briefs for potential filing in court.

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
  - i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

From 1995 to 1996, I was a law clerk to Judge J. Harvie Wilkinson III, United States Court of Appeals for the Fourth Circuit. From 1997 to 1998, I was a law clerk to Justice Sandra Day O'Connor, Supreme Court of the United States.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced law alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

Summer 1995  
King & Spalding LLP  
1700 Pennsylvania Avenue, NW, Suite 200  
Washington, DC 20006  
Summer Associate

1996 – 1997  
Office of the Solicitor General  
Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530  
Bristow Fellow

1998 – 2002  
O'Melveny & Myers LLP  
1625 Eye Street, NW  
Washington, DC 20006  
Associate (1998 – 2002)  
Counsel (2002)

2002 – 2007  
Office of the Solicitor General  
Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530  
Assistant to the Solicitor General

2007 – 2011  
O'Melveny & Myers LLP  
1625 Eye Street, NW  
Washington, DC 20006  
Partner

2011 – present  
Office of the Solicitor General  
Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530  
Principal Deputy Solicitor General

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not personally been retained as an arbitrator or mediator, but while in private practice as an associate and counsel at O'Melveny & Myers from 1998 to 2002, I assisted partners who served as a mediator or arbitrator in three matters. One matter involved an effort to mediate a dispute between defense contractors and the federal government. Another matter involved an arbitration panel convened under the North American Free Trade Agreement. And a third matter involved a federal arbitration panel convened to establish the valuation of a film.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

During my two tenures in private practice with O'Melveny & Myers and during my two tenures in the Solicitor General's Office since becoming a practicing lawyer, the overwhelming focus of my practice has been appellate and Supreme Court litigation. The character of my practice has not materially changed over the years, although as I have gained more experience and seniority, my role and responsibilities in the matters on which I've worked have grown accordingly.

As an associate and counsel at O'Melveny & Myers from 1998 to 2002, my principal role was to prepare initial drafts of briefs and other filings and to assist with oral argument preparation for attorneys who presented oral argument. As an Assistant to the Solicitor General from 2002 to 2007, I continued to prepare drafts of appellate briefs and assisted other attorneys with oral argument preparation, but I also gained increasing responsibility for delivering oral arguments. When I returned to O'Melveny & Myers as a partner from 2007 to 2011, I primarily reviewed drafts of briefs prepared by more junior lawyers rather than preparing initial drafts myself, and I was ordinarily charged with leading a legal team on a particular matter, including overseeing and managing the relationship with the client and delivering oral argument when applicable. In 2008, I became Hiring Partner of the Washington, DC, office of

O'Melveny & Myers, and I therefore assumed primary responsibility for recruiting attorneys to the office. In 2011, I became firm-wide Chair of the Appellate Practice Group, and I assumed principal administrative responsibility for managing that practice. Since returning to the Solicitor General's Office in 2011 as Principal Deputy Solicitor General, my principal responsibilities include reviewing draft briefs prepared by other attorneys in the Office and delivering oral arguments in the Supreme Court on behalf of the United States, as well as sharing primary responsibility for managing the Office.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

While in private practice with O'Melveny & Myers as an associate/counsel from 1998 to 2002 and as a partner from 2007 to 2011, my clients typically were private companies, although I also represented individuals and nonprofit organizations, including in pro bono matters. While in the Solicitor General's Office from 2002 to 2007 and from 2011 to the present, my clients were (and are) the United States and federal government agencies. I have not specialized in any particular area of law but instead have maintained a general appellate practice addressing a broad range of legal issues for a broad array of clients.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Virtually all of my practice has been in litigation, mostly in the Supreme Court of the United States and federal courts of appeals, although while in private practice, I also did some work in federal district court proceedings. I have appeared in court with some frequency, particularly in the Supreme Court and the federal courts of appeals. Since 2002, I have argued 20 cases in the Supreme Court, and have argued on nine occasions in the federal courts of appeals (in the Second, Third, Ninth, Eleventh, District of Columbia, and Federal Circuits). I have also argued on two occasions in state court.

- i. Indicate the percentage of your practice in:

1. federal courts:	90%
2. state courts of record:	10%
3. other courts:	0%
4. administrative agencies:	0%

- ii. Indicate the percentage of your practice in:

1. civil proceedings:	80%
2. criminal proceedings:	20%

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

My practice has been principally focused on appellate litigation, and I have not tried any cases to verdict in a trial court. While in private practice at O'Melveny & Myers, I was involved in certain proceedings that were resolved by the trial court on motions for judgment. For example, I was lead counsel in a California state trial court proceeding on behalf of a client that brought a constitutional challenge to a state property tax. I also was lead counsel in a state trial court proceeding that sought to disqualify my law firm from a representation based on an alleged conflict of interest.

- i. What percentage of these trials were:

1. jury: \_\_\_\_\_ %  
 2. non-jury: \_\_\_\_\_ %

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

While in the Solicitor General's Office, the principal focus of my practice has been before the Supreme Court, and while at O'Melveny & Myers, I was also regularly involved in briefing and argument before the Supreme Court. In undertaking to identify any briefs filed in, and oral arguments before, the Supreme Court, I searched my own records, the Supreme Court's docket, and Internet databases. That search identified the following cases.

Argued Cases:

*Reichle v. Howards*, --- S. Ct. ---, 2012 WL 1969351 (2012) (transcript, 2012 WL 950281; amicus brief for United States supporting petition for writ of certiorari, 2011 WL 4518473; amicus brief supporting petitioners, 2012 WL 259393)

*Perry v. Perez*, 132 S. Ct. 934 (2012) (transcript, 2012 WL 38642; amicus brief for United States supporting affirmance in part and vacatur in part, 2011 WL 6851350)

*Messerschmidt v. Millender*, 132 S. Ct. 1235 (2012) (transcript, 2011 WL 6020515)

*Carachuri-Rosendo v. Holder*, 130 S. Ct. 2577 (2010) (transcript, 2010 WL 1285403; petition for writ of certiorari, 2009 WL 2106403; reply to brief in

opposition, 2009 WL 4249550; brief for petitioner, 2010 WL 342042; reply brief for petitioner, 2010 WL 1130159)

*Skilling v. United States*, 130 S. Ct. 2896 (2010) (transcript, 2010 WL 710521; brief for petitioner, 2009 WL 4818500; reply brief for petitioner, 2010 WL 636023)

*Hertz Corp. v. Friend*, 130 S. Ct. 1181 (2010) (transcript, 2009 WL 3750778; brief for petitioner, 2009 WL 2445742; reply brief for petitioner, 2009 WL 3550274)

*Horne v. Flores*, 129 S. Ct. 2579 (2009) (transcript, 2009 WL 1043786; brief for respondent, 2009 WL 819476)

*Abuelhawa v. United States*, 129 S. Ct. 2102 (2009) (transcript, 2009 WL 579150; petition for writ of certiorari, 2008 WL 3607072; reply to brief in opposition, 2008 WL 4753012; brief for petitioner, 2008 WL 5433360; reply brief for petitioner, 2009 WL 476568)

*Permanent Mission of India v. City of New York*, 127 S. Ct. 2352 (2007) (transcript, 2007 WL 1198566)

*Zuni Pub. Sch. Dist. v. Dept. of Education*, 127 S. Ct. 2931 (2007) (transcript, 2007 WL 102641; brief for federal respondent, 2006 WL 3742248)

*Watters v. Wachovia Bank*, 127 S. Ct. 1559 (2007) (transcript, 2006 WL 3431931; amicus brief for United States supporting respondents, 2006 WL 3203255)

*Empire HealthChoice Assurance v. McVeigh*, 126 S. Ct. 2121 (2006) (transcript, 2006 WL 1194432)

*Fernandez-Vargas v. United States*, 126 S. Ct. 2422 (2006) (transcript, 2006 WL 850976; brief for respondent, 2006 WL 331814)

*Wachovia Bank v. Schmidt, III*, 126 S. Ct. 941 (2006) (transcript, 2005 WL 3358081; amicus brief for United States supporting petitioner, 2005 WL 2006668)

*Cherokee Nation v. Thompson*, 125 S. Ct. 1172 (2005) (transcript, 2004 WL 2650544; brief for federal parties, 2004 WL 2030951)

*Smith v. Massachusetts*, 125 S. Ct. 1129 (2005) (transcript, 2004 WL 2890017; amicus brief for United States supporting respondent, 2004 U.S. S. Ct. Briefs LEXIS 700)

*Hiibel v. Sixth Jud. Dist. Ct.*, 124 S. Ct. 2451 (2004) (transcript, 2004 WL 720099; amicus brief for United States supporting respondent, 2004 WL 121587)

*Maryland v. Pringle*, 124 S. Ct. 795 (2003) (transcript, 2003 WL 22658996; amicus brief for United States supporting petitioner, 2003 WL 21230195)

*Massaro v. United States*, 123 S. Ct. 1690 (2003) (transcript, 2003 WL 840200; brief for United States, 2002 WL 31868910)

*Sattazahn v. Pennsylvania*, 123 S. Ct. 732 (2003) (transcript, 2002 WL 31525418; amicus brief for United States supporting respondent, 2002 WL 1798904)

Briefed Cases:

*U.S. Department of Health & Human Services, et al. v. Commonwealth of Massachusetts, Office of Personnel Management, et al. v. Gill*, No. 12-15 (petition for writ of certiorari, 2012 WL 2586937) (cert. pending)

*Office of Personnel Management, et al. v. Golinski*, No. 12-16 (petition for writ of certiorari before judgment, 2012 WL 2586938) (cert. pending)

*Jayyousi v. United States*, Nos. 11-1194, 11-1198, 11-9672 (2012) (brief for United States in opposition, 2012 WL 1961399) (cert. denied)

*Corboy v. Louie*, No. 11-336 (2012) (amicus brief for United States, 2012 WL 1957789) (cert. denied)

*Vance v. Ball State University*, No. 11-556 (2012) (amicus brief for United States, 2012 WL 1883112) (cert. granted)

*Tenenbaum v. Sony BMG Music Entertainment*, No. 11-1019 (2012) (brief for United States in opposition, 2012 WL 1374518) (cert. denied)

*United States v. Trunk*, No. 11-1115 (2012) (petition for writ of certiorari, 2012 WL 826561; reply brief to brief in opposition, 2012 WL 1883091) (cert. denied)

*Hartman v. Moore*, No. 11-836 (2012) (petition for writ of certiorari, 2012 WL 27028; reply to brief in opposition, 2012 WL 396517) (cert. granted but remanded for reconsideration after *Reichle v. Howards*)

*Filarsky v. Delia*, 132 S. Ct. 1657 (2012) (amicus brief for United States supporting petitioner, 2011 WL 5908946)

*Elgin v. Dep't of Treasury*, --- S. Ct. ---, 2012 WL 2076340 (2012) (brief for respondent, 2012 WL 135052)



*Magner v. Gallagher*, No. 10-1032 (2012) (amicus brief for United States in support of neither party, 2011 WL 6851347) (case dismissed)

*CompuCredit v. Greenwood*, 132 S. Ct. 665 (2012) (petition for writ of certiorari, 2011 WL 220713; reply to brief in opposition, 2011 WL 1427926; brief for petitioners, 2011 WL 2533009; reply brief for petitioners, 2011 WL 3947570)

*Hosanna Tabor v. EEOC*, 132 S. Ct. 694 (2012) (brief for respondent, 2011 WL 3380507)

*Nat'l Ass'n of Broadcasters v. FCC*, No. 11-698 (2012) (brief for federal respondents in opposition, 2012 WL 748422) (cert. denied)

*Media Gen'l v. FCC*, Nos. 11-691, 11-696 (2012) (brief for federal respondents, 2012 WL 748419) (cert. denied)

*United States v. Jones*, 132 S. Ct. 945 (2012) (brief in opposition, 2011 WL 2263361) (cert. granted)

*Credit Suisse v. Simmonds*, 132 S. Ct. 1414 (2012) (petition for writ of certiorari, 2011 WL 1479066; reply to brief in opposition, 2011 WL 2192272; brief for petitioners, 2011 WL 3678807)

*Kawashima v. Holder*, 132 S. Ct. 1166 (2012) (amicus brief for National Immigration and Criminal Defense Organizations in support of petitioners, 2011 WL 3706107)

*Compton Unified School Dist. v. Addison*, No. 10-886 (2011) (amicus brief for United States, 2011 WL 5834641) (cert. denied)

*Harrison v. Gillespie*, No. 11-168 (2011) (petition for writ of certiorari, 2011 WL 3511030) (cert. denied)

*Board of Trustees of Leland Stanford Junior University v. Roche Molecular Systems*, 131 S. Ct. 2188 (2011) (amicus brief for National Venture Capital Association in support of petitioner, 2010 WL 5385331)

*Conkright v. Frommert*, 130 S. Ct. 1640 (2010) (amicus brief for Chief Actuaries in support of neither party, 2009 WL 3844396)

*Escobar v. Holder*, No. 09-203 (2010) (petition for writ of certiorari, 2009 WL 2524216) (cert. granted, but remanded for reconsideration after *Carachuri-Rosendo v. Holder*)

*Chamber of Commerce v. Whiting*, 131 S. Ct. 1968 (2010) (amicus brief for business groups in support of petitioners, 2010 WL 3518660; amicus brief for

business groups in support of petitioners, 2009 WL 2759756 (case then known as *Chamber of Commerce v. Candelaria*))

*Salazar v. Buono*, 130 S. Ct. 1803 (2010) (amicus brief for Public Employees for Environmental Responsibility in support of respondent, 2009 WL 2406363)

*Bosack v. Sowards*, No. 09-682 (2010) (petition for writ of certiorari, 2009 WL 4780929; reply to brief in opposition, 2010 WL 391260) (cert. denied)

*Encarnacion v. Astrue*, No. 09-631 (2010) (amicus brief for Empire Justice Center in support of petitioner, 2010 WL 25056) (cert. denied)

*NRG Power Mktg. v. Maine Public Utilities Comm'n*, 130 S. Ct. 693 (2010) (amicus brief for Morgan Stanley Capital Group in support of petitioners, 2009 WL 2054588)

*Cuomo v. The Clearinghouse Ass'n*, 129 S. Ct. 2710 (2009) (amicus brief for the Chamber of Commerce of the U.S. in support of respondents, 2009 WL 870020)

*Bartlett v. Strickland*, 129 S. Ct. 1231 (2009) (brief for petitioner, 2008 WL 2415164; reply brief for petitioner, 2008 WL 4195143)

*Hawaii v. Office of Hawaiian Affairs*, 129 S. Ct. 1436 (2009) (amicus brief for Hawaii Congressional Delegation in support of respondents, 2009 WL 230934)

*American Bankers Ass'n v. Brown*, No. 08-730 (2009) (petition for writ of certiorari, 2008 WL 5151079; reply to brief in opposition, 2009 WL 420586; supplemental brief, 2009 WL 1614571) (cert. denied)

*FTC v. Rambus*, No. 08-694 (2008) (amicus brief for Hynix Semiconductor, Micron Technology, and Nvidia Corp. in support of petitioners, 2008 WL 5417451) (cert. denied)

*ExxonMobil v. Doe*, No. 07-81 (2008) (supplemental brief for petitioner, 2008 WL 2219971) (cert. denied)

*Mora v. New York*, No. 08-106 (2008) (petition for writ of certiorari, 2008 WL 2855745; reply to brief in opposition, 2008 WL 4371242) (cert. denied)

*Morgan Stanley Capital Group v. Public Utility Dist. No. 1*, 129 S. Ct. 445 (2008) (brief for petitioner, 2007 WL 4986239; reply brief for petitioner, 2008 WL 336302)

*Flores-Figueroa v. United States*, 129 S. Ct. 1886 (2008) (amicus brief for National Ass'n of Criminal Defense Lawyers in support of petitioner, 2008 WL 5369546)

*Crawford v. Marion County Election Bd.*, 128 S. Ct. 1610 (2008) (amicus brief for Lawyers' Committee for Civil Rights et al. in support of petitioners, 2007 WL 3407030)

*Cone v. Bell*, 129 S. Ct. 1769 (2008) (amicus brief for former prosecutors in support of petition for writ of certiorari, 2008 WL 859363; amicus brief for former prosecutors in support of petitioner, 2008 WL 4217235)

*Murphy v. Oklahoma*, No. 05-10787 (2007) (amicus brief for United States, 2007 WL 1319320) (cert. denied)

*Uttecht v. Brown*, 127 S. Ct. 2218 (2007) (amicus brief for United States supporting petitioner, 2007 WL 621850)

*Burke v. Wachovia Bank*, No. 05-431 (2006) (amicus brief for United States, 2006 WL 1306808) (cert. denied)

*Beard v. Banks*, 126 S. Ct. 2572 (2006) (amicus brief for United States supporting petitioner, 2006 WL 42054)

*Georgia v. Randolph*, 126 S. Ct. 1515 (2005) (amicus brief for United States supporting petitioner, 2005 WL 1453877)

*Rumsfeld v. Padilla*, 124 S. Ct. 2711 (2004) (petition for writ of certiorari, 2004 WL 113598; reply to brief in opposition, 2004 WL 288932; brief for petitioner, 2004 WL 542777; reply brief for petitioner, 2004 WL 871163)

*Florida v. Nixon*, 125 S. Ct. 551 (2004) (amicus brief for United States supporting petitioner, 2004 WL 1136530)

*Price v. Vincent*, 123 S. Ct. 1848 (2003) (amicus brief for United States supporting petitioner, 2003 WL 721560)

*Crawford v. Washington*, 124 S. Ct. 1354 (2003) (amicus brief for United States, 2003 WL 22228005)

*Circuit City Stores v. Adams*, No. 01-1460 (2002) (petition for writ of certiorari, 2002 WL 32136015) (cert. denied)

*Bell v. Cone*, 122 S. Ct. 1843 (2002) (amicus brief for National Ass'n of Criminal Defense Lawyers in support of respondent, 2002 WL 377918)

*Washington Dep't of Social & Health Services v. Guardianship Estate of Keffeler*, 123 S. Ct. 1017 (2002) (petition for writ of certiorari, 2002 WL 32101184) (cert. granted)

*Venetian Casino Resort v. Local Joint Executive Board*, No. 01-918 (2002) (petition for writ of certiorari, 2001 WL 34116723; reply to brief in opposition, 2002 WL 32135462) (cert. denied)

*Ford Motor Co. v. Citibank*, No. 01-896 (2002) (petition for writ of certiorari, 2001 WL 34117499; reply to brief in opposition, 2002 WL 32136051) (cert. granted and dismissed as improvidently granted)

*US Airways v. Barnett*, 122 S. Ct. 1516 (2002) (petition for writ of certiorari, 2001 WL 34091942; reply to brief in opposition, 2001 WL 34091963; brief for petitioner, 2001 WL 747864; reply brief for petitioner, 2001 WL 1167779)

*Easley v. Cromartie*, 121 S. Ct. 1452 (2001) (reply brief for state appellants, 2000 WL 1687889 (case then known as *Hunt v. Smallwood*))

*City of Tacoma v. Qwest*, No. 01-596 (2001) (brief in opposition, 2001 WL 34115989) (cert. denied)

*Memorial Hospitals Ass'n v. Humphrey*, No. 00-1860 (2001) (petition for writ of certiorari, 2001 WL 34125239) (cert. denied)

*Semtek v. Lockheed Martin*, 121 S. Ct. 1021 (2001) (brief for respondent, 2000 U.S. S. Ct. Briefs LEXIS 531)

*United Airlines v. Frank*, No. 00-0948 (2000) (petition for writ of certiorari, 2000 WL 34000446; reply to brief in opposition, 2001 WL 34117186) (cert. denied)

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

In answering this question, I focused on cases in which I presented oral argument as a reflection of the significance of the commitment on my part to the particular matter and of the importance of the matter in my own experience. I have listed the matters in reverse chronological order, based on the date of decision.

1. *Reichle v. Howards*, No. 11-262, 2012 WL 1969351 (U.S. Sup. Ct. June 4, 2012). I argued this case in the Supreme Court on behalf of the United States as amicus curiae supporting petitioners, and I was the Deputy Solicitor General responsible for preparing a draft of the United States's brief. The case concerned the circumstances in which a lawsuit under *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971), may be brought against Secret Service agents engaged in the function of protecting the safety of the Vice President. The plaintiff alleged that Secret Service agents acting to protect then-Vice President Cheney unconstitutionally targeted the plaintiff for arrest based on the viewpoint of his criticism of the Vice President. The particular issue before the Court was whether such an arrest could give rise to a First Amendment claim under *Bivens* even if the arrest was supported by probable cause. The Supreme Court held that the agents were entitled to qualified immunity from suit because there was no clearly established rule that an arrest supported by probable cause could give rise to a First Amendment claim.

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2. *Perry v. Perez*, 132 S. Ct. 934 (2012). I argued this case in the Supreme Court on behalf of the United States as amicus curiae supporting affirmance in part and vacatur in part, and I was the Deputy Solicitor General responsible for preparing a draft of the United States's brief. The case concerned the standards for a court to apply when evaluating a proposed redistricting plan adopted by a State (here, Texas) that is subject to the preclearance requirement applicable to covered jurisdictions under Section 5 of the Voting Rights Act, when the State has yet to obtain preclearance of the proposed plan. The Supreme Court held that the lower court had applied an

incorrect standard in reviewing Texas's proposed and non-precleared redistricting plan, and the Court remanded for reconsideration of Texas's proposed plan under the correct framework.

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3. *Sarei v. Rio Tinto PLC*, 671 F.3d 736 (9th Cir. 2011) (en banc). I argued this case before the en banc Ninth Circuit on behalf of appellant Rio Tinto PLC, and I was principally responsible for preparing Rio Tinto's briefs at the en banc stage. The case involved a suit under the Alien Tort Statute by a group of plaintiffs against Rio Tinto alleging international law violations arising from the conduct of mining operations in Papua New Guinea during a civil war. The case raised a number of specific questions concerning the ATS, including the extent to which corporations are subject to liability under the ATS, the extraterritorial applicability of the ATS, the availability of liability under the ATS premised on an aiding-and-abetting theory, and the applicability and contours of an exhaustion requirement for ATS claims. A majority of the en banc Ninth Circuit remanded for further proceedings on certain of the claims. Rio Tinto sought certiorari in the Supreme Court, and the certiorari petition remains pending.

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4. *Doe v. Exxon Mobil Corp.*, 654 F.3d 11 (D.C. Cir. 2011). I argued this case before the D.C. Circuit on behalf of appellee Exxon Mobil Corp., and I was principally responsible for preparation of Exxon's brief. The case involved a suit by a group of plaintiffs against Exxon under the Alien Tort Statute, Torture Victims Protection Act, and state tort law, seeking recovery against Exxon for injuries allegedly suffered at the hands of Exxon's personnel in connection with the company's conduct of operations in Indonesia in the course of a civil war. The specific issues raised by the case include the extent to which the TVPA and ATS support liability against corporations, the extent to which the ATS applies extraterritorially, the extent to which the ATS supports liability premised upon an aiding-and-abetting theory, and the extent to which the common-law tort claims are preempted by federal law. A majority of the D.C. Circuit affirmed the district court's dismissal of the TVPA claims but reversed the dismissal of the ATS claims and the common-law tort claims, and the court of appeals remanded for further proceedings on the latter claims. Exxon filed a petition for rehearing en banc, which remains pending.

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5. *Hynix Semiconductor, Inc. v. Rambus, Inc.*, 645 F.3d 1336 (Fed. Cir. 2011). I argued this case before the Federal Circuit on behalf of appellant Hynix Semiconductor, Inc., and I was principally responsible for preparation of Hynix's briefs. The case involved the enforceability of appellee Rambus's patents concerning a form of computer memory. The district court granted judgment in favor of Rambus. My client Hynix argued on appeal that the patents were unenforceable for a number of reasons, including that Rambus had engaged in spoliation of material documents notwithstanding the reasonable foreseeability of litigation, that Rambus's objectionable conduct in connection with a standard-setting organization triggered defenses of implied waiver and equitable estoppel, that a proper construction of the claim rendered the scope of the claimed invention unduly broad, that the patents were invalid for lack of a written description, and that the claims were obvious. The court of appeals ruled in Hynix's favor on the issue of spoliation (but otherwise affirmed the district court), and therefore vacated the district court's decision and remanded for further proceedings on the issue of spoliation.

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6. *Skilling v. United States*, 130 S. Ct. 2896 (2010). I argued this case in the Supreme Court on behalf of petitioner Jeffrey Skilling, and I was integrally involved



in drafting the briefs for petitioner. The Supreme Court considered two questions in connection with this case: (i) whether the conduct of the trial and the jury selection process sufficiently protected petitioner's right to a trial by an impartial jury; and (ii) whether the federal honest-services fraud statute is unconstitutionally vague or was construed in an unduly broad fashion as applied against petitioner. The Supreme Court concluded that there had been no unconstitutional infringement of petitioner's right to a trial by an impartial jury, but that the honest-services fraud statute—although not unconstitutionally vague—had been construed in an unduly broad fashion as applied against petitioner. The Court adopted a narrower construction of the honest-services fraud statute under which that statute was limited to the contexts of bribes and kickbacks. Because the honest-services charge against petitioner was premised on an invalid, broader understanding of the statute's scope, the Court remanded the case for consideration of whether the invalid application of the honest-services fraud statute against petitioner was harmless error.

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7. *Carachuri-Rosendo v. Holder*, 130 S. Ct. 2577 (2010). I argued this case in the Supreme Court on behalf of petitioner Carachuri-Rosendo, and I was principally responsible for preparing the briefs for petitioner. The issue in the case was whether a person convicted of a misdemeanor drug offense could be treated as an aggravated felon under the federal immigration laws—and therefore subject to removal from the country—on the basis that he could have been prosecuted and convicted of a felony as a recidivist drug offender. The Supreme Court held that such a person is not

properly considered an aggravated felon and therefore is not subject to removal from the country on the basis of his conviction.

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8. *Hertz Corp. v. Friend*, 130 S. Ct. 1181 (2010). I argued this case in the Supreme Court on behalf of petitioner Hertz Corp. and was principally responsible for preparing the briefs for petitioner. The issue in the case concerned the proper standards for determining a corporation's principal place of business for purposes of establishing the corporation's citizenship, which in turn determines the corporation's entitlement to diversity jurisdiction in federal court. The Court accepted the argument made by Hertz to the effect that a corporation's principal place of business is generally defined by the location of its corporate headquarters. The Court therefore reversed the decision of the court of appeals, which had adopted a different standard for assessing a corporation's principal place of business that turned on considerations such as the extent of business activity and revenues in a particular state.

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9. *Horne v. Flores*, 557 U.S. 433 (2009). I argued this case in the Supreme Court on behalf of the respondents, a class of English Language Learner (ELL) students and their parents who reside in Arizona, and I was principally responsible for preparing the brief for respondents. The issue in the case was whether the State of Arizona was complying with its obligation under the Equal Education Opportunities Act to take appropriate actions to overcome language barriers for ELL students. The court of appeals had ruled that the State's funding level for programs for ELL students was deficient, such that the State was failing to meet its obligations under the EEOA. The Supreme Court held that the court of appeals had applied an incorrect framework in assessing whether the State was in compliance with its obligations under the EEOA, and the Supreme Court therefore vacated the court of appeals' decision and remanded for further proceedings under the correct approach.

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10. *Abuelhawa v. United States*, 556 U.S. 816 (2009). I argued this case in the Supreme Court for petitioner Abuelhawa, and was principally responsible for preparing the briefs for petitioner. The issue in the case was whether the use of a cell phone to purchase a misdemeanor quantity of drugs constituted a felony because it amounted to the use of a cell phone to facilitate the commission of a drug felony, *i.e.*, the dealer's felony sale of the drugs to the purchaser. The Supreme Court held that the use of a cell phone to purchase a misdemeanor quantity of drugs did not constitute the use of a cell phone to facilitate a drug felony, and that petitioner's felony convictions therefore must be set aside.

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18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe

the lobbying activities you performed on behalf of such client(s) or organizations(s).  
(Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

I have not performed lobbying activity on behalf of any client or organization, and I am not and have never been a registered lobbyist. The overwhelming focus of my practice has involved litigation or preparation for litigation. While in private practice with O'Melveny & Myers LLP, however, I occasionally provided strategic counseling to clients about the advantages and risks of potential courses of conduct, including legal risks, and provided advice and consultation aimed to ameliorate those risks. For instance, I participated in the drafting and preparation of legal analyses for clients to present to governmental agencies that sought to explain to the agencies why they should or should not initiate inquiries or enforcement activity. Specifically, I co-authored one such paper for presentation to an antitrust regulator to explain why a client's course of conduct should not raise antitrust scrutiny, and prepared a similar analysis for presentation to a consumer-fraud agency to explain why a client's business practices did not warrant the initiation of any sort of inquiry.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I co-directed a clinic on Supreme Court and Appellate Practice at Harvard Law School in Spring Semester 2010 and 2011. The other co-directors were Walter Dellinger and Jonathan Hacker, O'Melveny & Myers LLP. The course aimed to teach students about the various principal components of appellate practice, such as preparing and writing appellate briefs, presenting oral argument on appeal, understanding appellate standards of review, and compiling and working with an appellate record. The course also included a clinical component in which teams of students worked with attorneys at O'Melveny & Myers LLP in preparing appellate briefs for submission in pending cases. A syllabus for the course for 2010 is supplied.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have no arrangements to receive deferred compensation or future benefits from previous business relationships.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I have no plans, commitments, or agreements to pursue any outside employment during judicial service.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

If confirmed, I would recuse myself from any case in which I had previously participated as an attorney. I am unaware of any individuals, whether relatives or otherwise, who would be likely to present a conflict of interest. I would review, on a case-by-case basis, the existence of a potential conflict of interest arising from any personal or former client relationships or financial interests, and would apply generally applicable principles and rules concerning ethics and conflicts of interest in conducting such an inquiry and assessing whether a recusal is warranted.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I would consult applicable rules, canons, and decisions addressing conflicts of interest, including 28 U.S.C. § 455 and the Code of Conduct for United States Judges, and any other materials addressing conflicts of interest and appearances of conflicts of interest, with an eye towards developing a general framework to be applied in any case, supplemented by case-specific supplemental inquiries where warranted.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in

serving the disadvantaged.” Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I have devoted substantial time to pro bono representations while in private practice. While a partner with O’Melveny & Myers LLP from 2007 to 2011, I was lead counsel in three pro bono cases that I argued in the Supreme Court: (i) *Carachuri-Rosendo v. Holder*, on behalf of an immigrant alien who had been deported from the country; (ii) *Abuelhawa v. United States*, on behalf of a criminal defendant who had been convicted of minor drug offenses; and (iii) *Horne v. Flores*, on behalf of a group of English Language Learner students and their parents. I also represented a number of amicus clients on a pro bono basis in various matters in which the clients filed an amicus brief in cases in the Supreme Court (or other appellate courts). During my return to private practice from 2007 to 2011, I devoted, on average, several hundred hours each year to pro bono representations.

**26. Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In approximately November 2009, an official from the White House Counsel’s Office discussed with me the possibility of my being considered to fill a vacancy on the D.C. Circuit. On April 18, 2012, I met with the White House Counsel to discuss whether I would be interested in being considered for nomination to the D.C. Circuit. On April 20, 2012, I met with an official from the White House Counsel’s Office to discuss the nomination process. After that date, I was in contact with officials from the White House Counsel’s Office and officials from the Office of Legal Policy at the Department of Justice. On June 7, 2012, I met with the White House Counsel and officials from the White House Counsel’s Office. On June 11, 2012, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10  
Rev. 1/2012**FINANCIAL DISCLOSURE REPORT  
NOMINATION FILING***Report Required by the Ethics  
in Government Act of 1978  
(3 U.S.C. app. §§ 101-111)*

<b>1. Person Reporting (last name, first, middle initial)</b> Srinivasan, Srikanth	<b>2. Court or Organization</b> U.S. Court of Appeals for the D.C. Circuit	<b>3. Date of Report</b> 07/12/2012
<b>4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)</b> U.S. Court of Appeals Judge	<b>5a. Report Type (check appropriate type)</b> <input checked="" type="checkbox"/> Nomination      Date 06-11-2012 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final <b>5b.</b> <input checked="" type="checkbox"/> Amended Report	<b>6. Reporting Period</b> 01/01/2011 to 06/13/2012
<b>7. Chambers or Office Address</b> Office of the Solicitor General Department of Justice 950 Pennsylvania Ave., N.W. Washington, D.C. 20530		
<b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the <b>NONE</b> box for each part where you have no reportable information. Insert signature on last page.		

**I. POSITIONS.** (Reporting individual only; see pp. 9-13 of filing instructions.)☐ **NONE** (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1. Partner	OMelveny & Myers LLP
2. Member, Board of Directors	Washington Lawyers Committee for Civil Rights and Urban Affairs
3. Member, Board of Visitors	Stanford University Law School
4.	
5.	

**II. AGREEMENTS.** (Reporting individual only; see pp. 14-16 of filing instructions.)☒ **NONE** (No reportable agreements.)

DATE	PARTIES AND TERMS
1.	
2.	
3.	



**FINANCIAL DISCLOSURE REPORT**  
 Page 2 of 12

<b>Name of Person Reporting</b>	<b>Date of Report</b>
Srinivasan, Srikanth	07/12/2012

**III. NON-INVESTMENT INCOME.** *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*
**A. Filer's Non-Investment Income**
☐ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2010	O'Melveny & Myers LLP - partnership income	\$1,321,000.00
2. 2011	O'Melveny & Myers LLP - partnership income	\$1,338,000.00
3. 2012	NO REPORTABLE NON-INVESTMENT INCOME	
4.		

**B. Spouse's Non-Investment Income** - *If you were married during any portion of the reporting year, complete this section.  
(Dollar amount not required except for honoraria.)*
☒ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE
1.	
2.	
3.	
4.	

**IV. REIMBURSEMENTS** *-- transportation, lodging, food, entertainment.  
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)*
☐ NONE *(No reportable reimbursements.)*

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1. EXEMPT				
2.				
3.				
4.				
5.				

**FINANCIAL DISCLOSURE REPORT**  
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Name of Person Reporting	Date of Report
Srinivasan, Srikanth	07/12/2012

**V. GIFTS.** *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*
☐ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1.	EXEMPT		
2.			
3.			
4.			
5.			

**VI. LIABILITIES.** *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*
☐ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.	Citibank, N.A., Washington, D.C.	Capital loans for partnership shares at former law firm	None
2.			
3.			
4.			
5.			

**FINANCIAL DISCLOSURE REPORT**  
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Name of Person Reporting	Date of Report
Srinivasan, Srikanth	07/12/2012

**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-69 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
1. IRA #1					Exempt				
2. - Spartan 500 Index FUSVX	A	Dividend	K	T					
3. - Aston River Road Independent Value ARIVX	A	Dividend	J	T					
4. - Aberdeen Emerging Markets GEGAX	A	Dividend	J	T					
5. - Columbia Dividend Opportunity INUTX	A	Dividend	K	T					
6. - Columbia Select Lrg Cap Growth ELGAX	A	Dividend	K	T					
7. - Delaware Value DDVAX	A	Dividend	K	T					
8. - Doubleline Total Rt Bond DLTNX	A	Dividend	J	T					
9. - Dreyfus Bond Market Index DBMIX	A	Dividend	J	T					
10. - Driehaus Active Income LCMAX	A	Dividend	J	T					
11. - Federated Intern Corp Bond INISX	A	Dividend	J	T					
12. - Listed Private Equity LPEFX	A	Dividend	J	T					
13. - Merk Hard Currency MERKN	A	Dividend	J	T					
14. - Forward EM Corp Debt Fund FFXRX	A	Dividend	J	T					
15. - JP Morgan Strategic Income JSOAX	A	Dividend	J	T					
16. - JP Morgan High Yield Bond OHYAX	A	Dividend	J	T					
17. - Leuthold Asset Allocation LAALX	A	Dividend	J	T					

1. Income Item Codes: (See Columns B1 and D5)	A - \$1,000 or less F - \$50,001 - \$100,000 J - \$15,001 or less N - \$250,001 - \$500,000 P1 - \$25,000,001 - \$50,000,000 Q - Approx U - Book Value	B - \$1,001 - \$2,500 G - \$100,001 - \$1,000,000 K - \$15,001 - \$50,000 O - \$500,001 - \$1,000,000 R - Cost (Real Estate Only) V - Other	C - \$2,501 - \$5,000 H1 - \$1,000,001 - \$5,000,000 L - \$50,001 - \$100,000 P1 - \$1,000,001 - \$5,000,000 P2 - More than \$50,000,000 S - Assessment W - Estimated	D - \$5,001 - \$15,000 H2 - More than \$5,000,000 M - \$100,001 - \$250,000 P2 - \$5,000,001 - \$25,000,000 T - Cash Market	E - \$15,001 - \$50,000
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Name of Person Reporting	Date of Report
Srinivasan, Srikanth	07/12/2012

**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-68 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-I)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-I)	Identity of buyer/seller (if private transaction)
18. - MFS International Value MGIAN	A	Dividend	K	T					
19. - Merger Fund MERFX	A	Dividend	J	T					
20. - Morgan Stanley Global Real Estate MRLBX	A	Dividend	J	T					
21. - Pimco Emerging Markets PLMDX	A	Dividend							
22. - T.Rowe Price Growth Stock TRSAX	A	Dividend	K	T					
23. - RS Global Natural Resources RSNRX	A	Dividend	J	T					
24. - Ridgworth Mid Cap Value SMVFX	A	Dividend	J	T					
25. - Rivermouth Core Opportunity RNCOX	A	Dividend	J	T					
26. - T.Rowe Price Int'l Stock PAITX	A	Dividend	K	T					
27. - TCW Dividend Focused TGIIGX	A	Dividend	K	T					
28. - TCW Small Cap Growth TGSNX	A	Dividend	J	T					
29. - Touchstone Focused Equity TFEAX	A	Dividend	J	T					
30. - Wasatch Int'l Opps WAIQX	A	Dividend	J	T					
31. - Wasatch Emerging Markets Small Cap WAEEMX	A	Dividend	J	T					
32. - Westcare Select WTSIX	A	Dividend	J	T					
33. - Fidelity Cash Reserves FDRXX	A	Interest	J	T					
34. Brokerage Account #1									

1 Income Gain Codes:

(See Columns B) and D4)

2 Value Codes:

(See Columns C) and D5)

3 Value Method Codes:

(See Column C2)

A - \$1,000 or less

F - \$50,001 - \$100,000

N - \$250,001 - \$500,000

P1 - \$25,000,001 - \$50,000,000

Q - Appraisal

U - Book Value

B - \$5,001 - \$2,500

G - \$101,001 - \$1,000,000

K - \$15,001 - \$50,000

O - \$500,001 - \$1,000,000

R - Cost (Real Estate Only)

V - Other

C - \$2,501 - \$5,000

H - \$1,000,001 - \$5,000,000

L - \$10,001 - \$100,000

P1 - \$1,000,001 - \$5,000,000

P4 - More than \$50,000,000

S - Assessment

W - Estimated

D - \$5,001 - \$15,000

I1 - \$1,000,001 - \$5,000,000

I2 - More than \$5,000,000

M - \$100,001 - \$250,000

P2 - \$5,000,001 - \$25,000,000

T - Cash Market

E - \$15,001 - \$50,000

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Name of Person Reporting	Date of Report
Srinivasan, Srikanth	07/12/2012

**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or ent.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
35. - Spartan 500 Index FUSVX	A	Dividend	K	T					
36. - Fidelity Intern Muni Income FUTMX	A	Interest	L	T					
37. - Aston River Road Independent Value ARIVX	A	Dividend	J	T					
38. - Aberdeen Emerging Markets GEGAX	A	Dividend	J	T					
39. - Columbia Dividend Opp INUTX	A	Dividend	K	T					
40. - Columbia Select Large Cap Growth ELGAX	A	Dividend	K	T					
41. - Delaware Value DDVAX	A	Dividend	K	T					
42. - Doubleline Total Return Bond DLTNX	A	Dividend	K	T					
43. - Driehaus Active Income LCMAX	A	Dividend	J	T					
44. - Listed Private Equity LPEFX	A	Dividend	J	T					
45. - Merk Hard Currency MERKX	A	Dividend	J	T					
46. - Forward EM Corp Debt Fund FXRX	A	Dividend	J	T					
47. - JP Morgan Tax Aware TXRSX	A	Dividend	K	T					
48. - Leuthold Asset Allocation LAALX	A	Dividend	J	T					
49. - MFS Int'l Value MGIAX	A	Dividend	J	T					
50. - Merger Fund MERFX	A	Dividend	K	T					
51. - Morgan Stanley Global Real Estate MRLBX	A	Dividend	J	T					

1. Income/Gain Codes (See Columns B) and (D))	A - \$1,000 or less F - \$50,001 - \$100,000 J - \$15,001 or less N - \$250,001 - \$500,000 P1 - \$25,000,001 - \$50,000,000 Q - Appraisal U - Bank Value	B - \$1,001 - \$2,500 G - \$100,001 - \$1,000,000 K - \$15,001 - \$50,000 O - \$500,001 - \$1,000,000 R - Cost (Real Estate Only) V - Other	C - \$2,501 - \$5,000 H - \$1,000,001 - \$5,000,000 L - \$50,001 - \$100,000 P1 - \$1,000,001 - \$5,000,000 P4 - More than \$50,000,000 S - Assessment W - Estimated	D - \$5,001 - \$15,000 I2 - More than \$5,000,000 M - \$100,001 - \$250,000 P2 - \$5,000,001 - \$25,000,000 T - Cash Market	E - \$15,001 - \$50,000
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<b>Name of Person Reporting</b>	<b>Date of Report</b>
Srinivasan, Srikanth	07/12/2012

**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-68 of filing instructions.)

☐ **NONE** (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm dd yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
52. - Northern Intern Tax Exempt NOITX	A	Dividend	K	J					
53. - Pimco Emerging Markets PLMDX	A	Dividend							
54. - T.Rowe Price Growth Stock TRSAX	A	Dividend	K	T					
55. - RS Global Natural Resources RSNRX	A	Dividend	J	T					
56. - Ridgworth Mid Cap Value SMVFX	A	Dividend	J	T					
57. - Rivermorth Core Opp RNCOX	A	Dividend	K	T					
58. - T. Rowe Price Int'l Stock PAITX	A	Dividend	J	T					
59. - FCW Dividend Focused TGIGX	A	Dividend	K	T					
60. - FCW Small Cap Growth TGSNX	A	Dividend	J	T					
61. - Touchstone Focused Equity TFEAX	A	Dividend	J	T					
62. - Wasatch Int'l Opps WAIOX	A	Dividend	J	T					
63. - Wasatch Emerging Markets Small Cap WAEMX	A	Dividend	J	T					
64. - Wells Fargo Ultra Short Term Muni SMAVX	A	Dividend	J	T					
65. - Westcore Select WTSLX	A	Distribution	J	T					
66. - Fidelity Cash Reserves	A	Interest	J	T					
67. - Ishares Barclays Internt CIU	A	Dividend							
68. - Ishares Barclays 1-3 Year CD BD CSJ	A	Dividend							

1. Income Code Codes: (See Columns B1 and D4)	A - \$1,000 or less F - \$50,001 - \$100,000 J - \$15,001 or less N - \$250,001 - \$500,000 P1 - \$25,000,001 - \$50,000,000 Q - Appraisal U - Book Value	B - \$1,001 - \$2,500 G - \$100,001 - \$1,000,000 K - \$15,001 - \$50,000 O - \$500,001 - \$1,000,000 R - Cost (Real Estate Only) V - Other	C - \$2,501 - \$5,000 H - \$1,000,001 - \$5,000,000 L - \$10,001 - \$100,000 P1 - \$1,000,001 - \$5,000,000 P3 - More than \$50,000,000 S - Assessment W - Estimated	D - \$5,001 - \$15,000 I1 - \$1,000,001 - \$5,000,000 I2 - More than \$5,000,000 M - \$100,001 - \$250,000 P2 - \$5,000,001 - \$25,000,000 T - Cash Market	E - \$15,001 - \$50,000
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<b>Name of Person Reporting</b>	<b>Date of Report</b>
Srinivasan, Srikanth	07/12/2012

**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ **NONE** (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
69. Ishares Barclays 7-10 Year IEF	A	Dividend							
70. Ishares Trust 10+ Year Credit CLY	A	Dividend							
71. Market Vectors ETF Emerging EMLC	A	Dividend							
72. SPDR Barclays Cap High Yield JNK	C	Dividend							
73. Vanguard Bond Index BND	B	Dividend							
74. Vanguard Long Term Corporate VCLT	A	Dividend							
75. GlaxoSmithKline GSK	A	Dividend							
76. Telstra Corp TLSYY	A	Dividend							
77. AT&T	A	Dividend							
78. New York Community Bancorp NYB	A	Dividend							
79. Citibank Checking Account	A	Interest	M	T					
80. Wells Fargo (various cash accounts)	A	Interest	M	T					
81. American Express (various cash accounts)	D	Interest	O	T					
82. College Savings Plans #1									
83. - American Funds AMCAP 529A	A	Dividend	M	T					
84. - American Funds Balanced Funds 529A	C	Dividend	M	T					
85. - American Funds Mutual Fund 529A	A	Dividend	J	T					

1. Income Gain Codes (See Columns H1 and D3)	A - \$1,000 or less F - \$50,001 - \$100,000 J - \$15,000 or less N - \$250,001 - \$500,000 P - \$25,000,001 - \$50,000,000	D - \$1,001 - \$2,500 G - \$100,001 - \$1,000,000 K - \$15,001 - \$50,000 O - \$500,001 - \$1,000,000	C - \$2,501 - \$5,000 H - \$1,000,001 - \$5,000,000 L - \$50,001 - \$100,000 P - \$1,000,001 - \$5,000,000 P4 - More than \$50,000,000	D - \$5,001 - \$15,000 H2 - More than \$5,000,000 M - \$100,001 - \$250,000 P2 - \$5,000,001 - \$25,000,000	E - \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D2)	Q - Appraisal U - Book Value	R - Cost (Real Estate Only) V - Other	S - Assessment W - Estimated	T - Cash Market	

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**VII. INVESTMENTS and TRUSTS** - income, value, transactions (includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
86. - American Funds EuroPacific Growth 529A	A	Dividend	J	T					
87. - American Funds New Perspective 529A	A	Dividend	L	T					
88. - American Funds Growth Fund of America 529A	A	Dividend	L	T					
89. - American Funds Washington Mutual Investors Fund 529A	A	Dividend	J	T					
90. Brokerage Account #2									
91. - American Funds Tax Exempt Bond Fund of America Class A	A	Dividend	J	T					
92. - American Funds Growth Fund of America Class A	A	Dividend	J	T					
93. - American Funds New Economy Fund A	A	Dividend	J	T					
94. - American Funds Tax Exempt Fund of VA A	B	Dividend	L	T					
95. - American Funds Fundamental Investors A	A	Dividend	J	T					
96. - American Funds Bond Fund of America A	A	Dividend	J	T					
97. Mass Mutual VULG Guaranteed Principal	A	Interest	L	T					
98. Mass Mutual VULG American Funds Growth-Income		None	J	T					
99. Mass Mutual VULG Fidelity Contrafund		None	J	T					
100. Mass Mutual VULG DWS Small Cap Index		None	J	T					
101. Mass Mutual VULG MML Small/Mid Cap Equity		None	J	T					
102. Keogh #1									

1. Income Grant Codes (See Columns B1 and B3)	A - \$1,000 or less F - \$50,001 - \$100,000 J - \$15,000 or less N - \$250,001 - \$500,000 PJ - \$25,000,001 - \$50,000,000	B - \$1,001 - \$2,500 G - \$100,001 - \$1,000,000 K - \$15,001 - \$50,000 Q - \$500,001 - \$1,000,000	C - \$2,501 - \$5,000 H - \$1,000,001 - \$5,000,000 L - \$50,001 - \$100,000 P - \$1,000,001 - \$5,000,000 P4 - More than \$50,000,000	D - \$5,001 - \$15,000 I2 - More than \$5,000,000 M - \$100,001 - \$250,000 P2 - \$5,000,001 - \$25,000,000	E - \$15,001 - \$50,000
2. Value Codes (See Columns C1 and C3)	Q - Appraisal U - Book Value	R - Cost (Real Estate Only) V - Other	S - Assessment W - Estimated	T - Cash Market	



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**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-I)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-I)	Identity of buyer/seller (if private transaction)
103. - Fidelity Diversified International FDIVX	A	Dividend	K	T					
104. - American Beacon Large Cap Value Inv AAGPX	A	Dividend	L	T					
105. - American Funds Growth of America Class R5 RGAFX	A	Dividend	L	T					
106. - Ranner Sm/Mid Cap RIMSX	A	Dividend	K	T					
107. - Buffalo Sm Cap Stock BUPSX	A	Dividend	K	T					
108. - PIMCO Total Return Instl PTTRX	B	Dividend	L	T					
109. O'Melveny & Myers LLP Capital Account		None							
110.									
111.									
112.									
113.									
114.									
115.									
116.									
117.									
118.									

**1. Succession Codes**

(See Columns B3 and D4)

**2. Value Codes**

(See Columns C1 and D3)

**3. Value Method Codes**

(See Column C2)

A - \$1,000 or less

F - \$50,001 - \$100,000

I - \$15,000 or less

N - \$250,001 - \$500,000

P1 - \$25,000,001 - \$50,000,000

Q - Appraisal

U - Book Value

H - \$1,000 - \$2,500

K - \$50,001 - \$100,000

L - \$15,001 - \$50,000

O - \$500,001 - \$1,000,000

R - Cost (Real Estate Only)

V - Other

C - \$2,501 - \$5,000

J1 - \$1,000,001 - \$5,000,000

L - \$50,001 - \$100,000

P1 - \$1,000,001 - \$5,000,000

P4 - More than \$50,000,000

S - Assessment

W - Estimated

D - \$5,001 - \$10,000

J2 - More than \$5,000,000

M - \$100,001 - \$250,000

P2 - \$5,000,001 - \$25,000,000

T - Clock Market

E - \$15,001 - \$50,000

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**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.** *(Indicate part of report.)*

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**IX. CERTIFICATION.**

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: *s/ Srikanth Srinivasan*

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
Suite 2-301  
One Columbus Circle, N.E.  
Washington, D.C. 20544

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		798	500	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities - see schedule	1	540	600	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable - personal residence		990	000
Real estate owned - personal residence	1	600	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		11	700				
Cash value-life insurance		90	200				
Other assets itemize:							
Thrift Savings Plan		32	700				
				Total liabilities		990	000
				Net Worth	3	083	700
Total Assets	4	073	700	Total liabilities and net worth	4	073	700
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, cosigner or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

## FINANCIAL STATEMENT

## NET WORTH SCHEDULES

Listed Securities*Individual Retirement Account*

Spartan 500 Index Fund	\$ 20,900
ASTON/River Road Independent Value Fund	5,100
Aberdeen Emerging Markets Fund	4,000
Columbia Dividend Opportunity Fund	17,900
Columbia Select Large Cap Growth Fund	24,900
Delaware Value Fund	21,000
DoubleLine Total Return Bond Fund	13,700
Dreyfus Bond Market Index Fund	9,900
Driehaus Active Income Fund	10,600
Federated Intermediate Corp Bond Fund	4,500
ALPS/Red Rocks Listed Private Equity Fund	3,800
Merk Hard Currency Fund	2,800
Forward EM Corp Debt Report	3,500
JPMorgan Strategic Income Opportunities Fund	7,200
JPMorgan High Yield Bond Fund	3,600
Leuthold Asset Allocation Fund	3,600
MFS International Value Fund	16,700
Merger Fund	9,900
Morgan Stanley Institutional Global Real Estate Fund	3,500
T. Rowe Price Growth Stock Fund	26,400
RS Global Natural Resources Fund	10,100
RidgeWorth Mid-Cap Value Fund	13,200
RiverNorth Core Opportunity Fund	13,400
T. Rowe Price International Stock Fund	15,700
TCW Dividend Focused Fund	20,200
TCW Small Cap Growth Fund	4,800
Touchstone Focused Equity Fund	6,900
Wasatch International Opportunities Fund	8,300
Wasatch Emerging Markets Small Cap Fund	13,600
Westcore Select Fund	12,000
Fidelity Cash Reserves	4,300

*Brokerage Account #1*

Spartan 500 Index Fund	17,100
Fidelity Intermediate Municipal Income Fund	50,100
ASTON/River Road Independent Value Fund	4,600
Aberdeen Emerging Markets Fund	4,600
Columbia Dividend Opportunity Fund	20,400
Columbia Select Large Cap Growth Fund	21,700
Delaware Value Fund	17,700
DoubleLine Total Return Bond Fund	21,900
Driehaus Active Income Fund	11,300
ALPS/Red Rocks Listed Private Equity Fund	3,900
Merk Hard Currency Fund	3,600

Forward EM Corp Debt	4,400
JPMorgan Tax Aware Real Return Fund	21,900
Leuthold Asset Allocation Fund	4,300
MFS International Value Fund	14,800
Merger Fund	15,900
Morgan Stanley Institutional Global Real Estate Fund	4,700
Northern Intermediate Tax-Exempt Fund	46,800
T. Rowe Price Growth Stock Fund	22,800
RS Global Natural Resources Fund	11,000
RidgeWorth Mid-Cap Value Fund	11,800
RiverNorth Core Opportunity Fund	17,900
T. Rowe Price International Stock Fund	13,900
TCW Divided Focused Fund	17,300
TCW Small Cap Growth Fund	4,400
Touchstone Focused Equity Fund	5,700
Wasatch International Opportunities Fund	6,700
Wasatch Emerging Markets Small Cap Fund	10,900
Wells Fargo Ultra Short-Term Municipal Income Fund	6,500
Westcore Select Fund	11,300
Fidelity Cash Reserves	6,800
<i>Brokerage Account #2</i>	
American Funds Tax Exempt Bond Fund of America Class A	5,800
American Funds Growth Fund of America Class A	12,100
American Funds New Economy Fund Class A	13,000
American Funds Tax Exempt Fund of Virginia Class A	72,100
American Funds Fundamental Investors Class A	12,400
American Funds Bond Fund of America Class A	5,800
<i>Keogh</i>	
Fidelity Diversified International Fund	44,300
American Beacon Large Cap Value Fund	52,000
American Funds Growth of America R5	52,000
Rainier Small/Mid Cap Equity fund	26,600
Buffalo Small Cap Fund	29,200
PIMCO Total Return Fund	54,100
<i>College Savings Plans</i>	
American Funds AMCAP Fund -529A	109,400
American Funds American Balanced Fund -529A	109,600
American Funds American Mutual Fund -529A	14,500
American Funds EuroPacific Growth fund -529A	12,400
American Funds New Perspective Fund -529A	53,600
American Funds Growth Fund of America 529A	84,100
American Funds Washington Mutual Investors Fund -529A	4,900
Total Listed Securities	\$1,540,600

AFFIDAVIT

I, Srikanth Srinivasan, do swear  
that the information provided in this statement is, to the best  
of my knowledge, true and accurate.

July 12, 2012  
(DATE)

Srikanth Srinivasan  
(NAME)

SHARON D. WEST  
Notary Public, District of Columbia  
My Commission Expires October 31, 2012

Sharon D. West  
(NOTARY)

**Sri Srinivasan**  
**2357 N. Fillmore Street**  
**Arlington, VA 22207**

January 3, 2013

The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire I previously submitted in connection with my nomination on June 11, 2012, to serve as a United States Circuit Judge for the District of Columbia Circuit. Incorporating the additional information below, I certify that the information contained in that document is, to the best of my knowledge, true and accurate.

**Questions 6, 11.a**

I am no longer a member of the Board of Visitors of Stanford University Law School.

**Question 12.d**

On November 13, 2012, I gave remarks to students at Georgetown Law School, Constitutional Law I class, on the Supreme Court's consideration of the constitutionality of Section 5 of the Voting Rights Act. I have no notes, transcript, or recording. The address of Georgetown Law School is 600 New Jersey Avenue, NW, Washington, DC 20001.

On September 28, 2012, South Asian Youth Action (SAYA!) presented me with an annual Trailblazer award. I gave brief remarks upon receiving the award. I have no notes, transcript, or recording. SAYA!'s address is 54-05 Seabury Street, Elmhurst, NY 11373.



**Question 16.e**

Argued cases:

*Vance v. Ball State University*, No. 11-556 (pending) (transcript, 2012 WL 5903151; amicus brief for United States in support of neither party, 2012 WL 3864279)

*United States v. Bormes*, 133 S. Ct. 12 (2012) (transcript, 2012 WL 4506576)

Briefed cases:

*Levin v. United States*, No. 11-1351 (pending) (brief for respondent, 2012 WL 6607871)

*Hillman v. Marett*, No. 11-1221 (2012) (amicus brief for United States in support of neither party, 2012 WL 6591462) (cert. pending)

*Office of Personnel Management, et al. v. Pedersen*, No. 12-302 (petition for writ of certiorari before judgment, 2012 WL 3991479; reply to brief in opposition for federal petitioners, 2012 WL 5492465) (cert. pending)

*United States v. Windsor*, No. 12-307 (petition for writ of certiorari before judgment, 2012 WL 3991414; supplemental brief for United States, 2012 WL 5353873; reply to brief in opposition for United States, 2012 WL 5492448) (cert. granted)

*U.S. Department of Health & Human Services, et al. v. Commonwealth of Massachusetts, et al.*, No. 12-15 (reply to brief in opposition for federal petitioners, 2012 WL 5460371) (cert. pending)

*Office of Personnel Management, et al. v. Golinski*, No. 12-16 (reply to brief in opposition for federal petitioners, 2012 WL 5460372) (cert. pending)

*Kloeckner v. Solis*, 133 S. Ct. 596 (2012) (brief for respondent, 2012 WL 2883261)

I also am forwarding an updated Net Worth Statement and Financial Disclosure Report as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

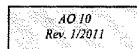
Sincerely,

A handwritten signature in cursive script, appearing to read "Sri Srinivasan".

Sri Srinivasan

cc:

The Honorable Charles Grassley  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510



# FINANCIAL DISCLOSURE REPORT NOMINATION FILING

Report Required by the Ethics  
in Government Act of 1978  
(5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial) Srinivasan, Srikanth	2. Court or Organization U.S. Court of Appeals for the D.C. Circuit	3. Date of Report 01/03/2013
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. Court of Appeals Judge	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date 01/03/2013 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2012 to 12/31/2012
7. Chambers or Office Address Office of the Solicitor General Department of Justice 950 Pennsylvania Ave., N.W. Washington, D.C. 20530	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer: _____ Date: _____	
<p><b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.</p>		

## I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions.)

☐ NONE (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1. Member, Board of Visitors	Stanford University Law School
2.	
3.	
4.	
5.	

## II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions.)

☒ NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1.	
2.	
3.	

**FINANCIAL DISCLOSURE REPORT**  
 Page 2 of 12

Name of Person Reporting	Date of Report
Srinivasan, Srikanth	01/03/2013

**III. NON-INVESTMENT INCOME.** *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*
**A. Filer's Non-Investment Income**
☐ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2011	O'Melveny & Myers LLP - partnership income	\$1,338,000.00
2. 2012	NO REPORTABLE NON-INVESTMENT INCOME	
3.		
4.		

**B. Spouse's Non-Investment Income** - *If you were married during any portion of the reporting year, complete this section.  
(Dollar amount not required except for honoraria.)*
☒ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE
1.	
2.	
3.	
4.	

**IV. REIMBURSEMENTS** - *transportation, lodging, food, entertainment.  
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)*
☐ NONE *(No reportable reimbursements.)*

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1. EXEMPT				
2.				
3.				
4.				
5.				

**FINANCIAL DISCLOSURE REPORT**  
 Page 3 of 12

<b>Name of Person Reporting</b>	<b>Date of Report</b>
Srinivasan, Srikanth	01/03/2013

**V. GIFTS.** *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*
☐ NONE *(No reportable gifts.)*

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.	EXEMPT		
2.			
3.			
4.			
5.			

**VI. LIABILITIES.** *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*
☒ NONE *(No reportable liabilities.)*

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.			
2.			
3.			
4.			
5.			

**FINANCIAL DISCLOSURE REPORT**

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<b>Name of Person Reporting</b>	<b>Date of Report</b>
Srinivasan, Srikanth	01/03/2013

**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)
☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
1. IRA #1					Exempt				
2. - Spartan 500 Index FUSVX	A	Dividend	K	T					
3. - Aston River Road Independent Value ARIVX	A	Dividend	J	T					
4. - Aberdeen Emerging Markets GEGAX	A	Dividend	J	T					
5. - Columbia Dividend Opportunity INUTX	A	Dividend	K	T					
6. - Columbia Select Lrg Cap Growth ELGAX	A	Dividend	L	T					
7. - Delaware Value DDVAX	A	Dividend	K	T					
8. - Doubleline Total Rt Bond DLTNX	A	Dividend	K	T					
9. - Dreyfus Bond Market Index DBMIX	A	Dividend	K	T					
10. - Driehaus Active Income LCMAX	A	Dividend	K	T					
11. - Federated Interns Corp Bond INISX	A	Dividend	J	T					
12. - Listed Private Equity LPEFX	A	Dividend	J	T					
13. - Merk Hard Currency MERKX	A	Dividend	J	T					
14. - Forward EM Corp Debt Fund FFXRX	A	Dividend	J	T					
15. - JP Morgan Strategic Income JSOAX	A	Dividend	J	T					
16. - JP Morgan High Yield Bond OHYAX	A	Dividend	J	T					
17. - MFS International Value MGIAX	A	Dividend	K	T					

1. Income Gain Codes:	A = \$1,000 or less	B = \$1,001 - \$2,500	C = \$2,501 - \$5,000	D = \$5,001 - \$15,000	E = \$15,001 - \$50,000
(See Columns B1 and D4)	F = \$50,001 - \$100,000	G = \$100,001 - \$1,000,000	H1 = \$1,000,001 - \$5,000,000	H2 = More than \$5,000,000	
2. Value Codes	J = \$15,000 or less	K = \$15,001 - \$50,000	L = \$50,001 - \$100,000	M = \$100,001 - \$250,000	
(See Columns C1 and D3)	N = \$250,001 - \$500,000	O = \$500,001 - \$1,000,000	P1 = \$1,000,001 - \$5,000,000	P2 = \$5,000,001 - \$25,000,000	
3. Value Method Codes	P3 = \$25,000,001 - \$50,000,000	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash Market
(See Column C2)	U = Book Value	V = Other	W = Estimated		

## FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting	Date of Report
Srinivasan, Srikanth	01/03/2013

## VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-40 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
18. - Morgan Stanley Global Real Estate MRLBX	A	Dividend	J	T					
19. - Pimco Total Return FTDX (X)	A	Dividend	J	T					
20. - T.Rowe Price Growth Stock TRSAX	A	Dividend	K	T					
21. - RS Global Natural Resources RSNRX	A	Dividend	K	T					
22. - Ridgworth Mid Cap Value SMVTX	A	Dividend	K	T					
23. - Rivemorth Core Opportunity RNCOX	A	Dividend	K	T					
24. - Riverpark Short Term High Yield RPHYX (X)	A	Dividend	J	T					
25. - T.Rowe Price Int'l Stock PATIX	A	Dividend	K	T					
26. - TCW Dividend Focused TGIGX	A	Dividend	K	T					
27. - TCW Small Cap Growth TGSNX	A	Dividend	J	T					
28. - Touchstone Focused Equity TFEAX	A	Dividend	J	T					
29. - Wasatch Int'l Opps WAIOX	A	Dividend	J	T					
30. - Wasatch Frontier Emerging Small Cos WAFMX (X)	A	Dividend	J	T					
31. - Wasatch Emerging Markets Small Cap WAEMX	A	Dividend	K	T					
32. - Fidelity Cash Reserves FDRXX	A	Interest	J	T					
33. - Leuthold Asset Allocation LAALX	A	Dividend							
34. - Merger Fund MERFX	A	Dividend							

1. Income Gain Codes:	A = \$1,000 or less	B = \$1,001 - \$2,500	C = \$2,501 - \$5,000	D = \$5,001 - \$15,000	E = \$15,001 - \$50,000
(See Columns B1 and D4)	F = \$50,001 - \$100,000	G = \$100,001 - \$1,000,000	H1 = \$1,000,001 - \$5,000,000	H2 = More than \$5,000,000	
2. Value Codes:	J = \$15,000 or less	K = \$15,001 - \$50,000	L = \$50,001 - \$100,000	M = \$100,001 - \$250,000	
(See Columns C1 and D3)	N = \$250,001 - \$500,000	O = \$500,001 - \$1,000,000	P1 = \$1,000,001 - \$5,000,000	P2 = \$5,000,001 - \$25,000,000	
3. Value Method Codes:	P3 = \$25,000,001 - \$50,000,000	R = Cost (Real Estate Only)	S = Assessment	T = Cash Market	
(See Column C2)	Q = Appraisal	U = Book Value	W = Estimated		

**FINANCIAL DISCLOSURE REPORT**  
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<b>Name of Person Reporting</b>	<b>Date of Report</b>
Srinivasan, Srikanth	01/03/2013

**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
35. - Pimco Emerging Markets PLDMX	A	Dividend							
36. - Westcore Select WTSIX	A	Dividend							
37. Brokerage Account #1									
38. - Spartan 500 Index FUSVX	A	Dividend	K	T					
39. - Fidelity Intern Muni Income FLTMX	A	Interest	L	T					
40. - Aston River Road Independent Value ARIVX	A	Dividend	J	T					
41. - Aberdeen Emerging Markets GEGAX	A	Dividend	J	T					
42. - Columbia Dividend Opp INUTX	A	Dividend	K	T					
43. - Columbia Select Large Cap Growth ELGAX	A	Dividend	K	T					
44. - Delaware Value DDVAX	A	Dividend	K	T					
45. - Doubleline Total Return Bond DLTNX	A	Dividend	K	T					
46. - Driehaus Active Income LCMAX	A	Dividend	J	T					
47. - Listed Private Equity LPEFX	A	Dividend	J	T					
48. - Merk Hard Currency MERKX	A	Dividend	J	T					
49. - Forward EM Corp Debt Fund FFXRX	A	Dividend	J	T					
50. - JP Morgan Tax Aware TXRSX	A	Dividend	K	T					
51. - MFS Int'l Value MGIAX	A	Dividend	K	T					

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P1 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$100,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 J12 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
2. Value Codes: (See Columns C1 and D3)					
3. Value Method Codes: (See Column C2)	Q = Appraisal U = Book Value				



**FINANCIAL DISCLOSURE REPORT**  
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<b>Name of Person Reporting</b>	<b>Date of Report</b>
Srinivasan, Srikanth	01/03/2013

**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "XX" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
52. - Merger Fund MERFX	A	Dividend	J	T					
53. - Morgan Stanley Global Real Estate MRLBX	A	Dividend	J	T					
54. - Northern Intern Tax Exempt NOITX	A	Dividend	L	T					
55. - T.Rowe Price Growth Stock TRSAX	A	Dividend	K	T					
56. - RS Global Natural Resources RSNRX	A	Dividend	J	T					
57. - Ridegworth Mid Cap Value SMVTX	A	Dividend	J	T					
58. - Rivernorth Core Opp RNCOX	A	Dividend	K	T					
59. - T. Rowe Price Int'l Stock PAITX	A	Dividend	J	T					
60. - TCW Dividend Focused TGIGX	A	Dividend	K	T					
61. - TCW Small Cap Growth TGSNX	A	Dividend	J	T					
62. - Touchstone Focused Equity/TFEAX	A	Dividend	J	T					
63. - Wasatch Int'l Opps WAI0X	A	Dividend	J	T					
64. - Wasatch Emerging Markets Small Cos WAFMX (X)	A	Dividend	J	T					
65. - Wasatch Emerging Markets Small Cap WAEMX	A	Dividend	J	T					
66. - Wells Fargo Ultra Short Term Muni SMAVX	A	Dividend	J	T					
67. - Fidelity Cash Reserves	A	Interest	J	T					
68. - Leuthold Asset Allocation LAALX	A	Dividend							

1. Income Gain Codes:	A = \$1,000 or less	B = \$1,001 - \$2,500	C = \$2,501 - \$5,000	D = \$5,001 - \$15,000	E = \$15,001 - \$50,000
(See Columns B1 and D4)	F = \$50,001 - \$100,000	G = \$100,001 - \$1,000,000	H1 = \$1,000,001 - \$5,000,000	H2 = More than \$5,000,000	
2. Value Codes	J = \$15,000 or less	K = \$15,001 - \$50,000	L = \$50,001 - \$100,000	M = \$100,001 - \$250,000	
(See Columns C1 and D3)	N = \$250,001 - \$500,000	O = \$500,001 - \$1,000,000	P1 = \$1,000,001 - \$5,000,000	P2 = \$5,000,001 - \$25,000,000	
3. Value Method Codes	P3 = \$25,000,001 - \$50,000,000	R = Cost (Real Estate Only)	S = Assessment	T = Cash Market	
(See Column C2)	Q = Appraisal	U = Book Value	V = Other	W = Estimated	

**FINANCIAL DISCLOSURE REPORT**  
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Name of Person Reporting	Date of Report
Srinivasan, Srikanth	01/03/2013

**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-68 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period					
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)	
69. - Pimco Emerging Markets PLDMX	A	Dividend								
70. - Westcore Select WTSIX	A	Dividend								
71. Roth IRA #1										
72. - American Funds AMCAP A AMCPX (X)	A	Dividend	J	T						
73. - American Funds New World A NEWFX (X)	A	Dividend	J	T						
74. - American Funds Small Cap World A SMCWX (X)	A	Dividend	J	T						
75. - American Funds Capital World Growth & Income A CWGIX (X)	A	Dividend	J	T						
76. - American Funds Washington Mutual A AWSHX (X)	A	Dividend	J	T						
77. - American Funds Income Fund of America A AMECX (X)	A	Dividend	J	T						
78. Citibank Checking Account	A	Interest	K	T						
79. Wells Fargo (various cash accounts)	A	Interest	P1	T						
80. American Express (various cash accounts)	D	Interest	J	T						
81. College Savings Plans #1										
82. - American Funds AMCAP 529A	A	Dividend	M	T						
83. - American Funds Balanced Funds 529A	B	Dividend	M	T						
84. - American Funds Mutual Fund 529A	A	Dividend	K	T						
85. - American Funds EuroPacific Growth 529A	A	Dividend	J	T						

1. Income Gain Codes:	A = \$1,000 or less	B = \$1,001 - \$2,500	C = \$2,501 - \$5,000	D = \$5,001 - \$15,000	E = \$15,001 - \$50,000
(See Columns B1 and D4)	F = \$50,001 - \$100,000	G = \$100,001 - \$1,000,000	H1 = \$1,000,001 - \$5,000,000	H2 = More than \$5,000,000	
2. Value Codes	J = \$15,000 or less	K = \$15,001 - \$50,000	L = \$50,001 - \$100,000	M = \$100,001 - \$250,000	
(See Columns C1 and D3)	N = \$250,001 - \$500,000	O = \$500,001 - \$1,000,000	P1 = \$1,000,001 - \$5,000,000	P2 = \$5,000,001 - \$25,000,000	
3. Value Method Codes	P3 = \$25,000,001 - \$50,000,000	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash Market
(See Column C2)	U = Book Value	V = Other	W = Estimated		

## FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting	Date of Report
Srinivasan, Srikanth	01/03/2013

## VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of spouse and dependent children; see pp. 34-49 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "XX" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
86. - American Funds New Perspective 529A	A	Dividend	L	T					
87. - American Funds Growth Fund of America 529A	A	Dividend	L	T					
88. - American Funds Washington Mutual Investors Fund 529A	A	Dividend	J	T					
89. Brokerage Account #2									
90. - American Funds Tax Exempt Bond Fund of America A AFTEX	A	Dividend	J	T					
91. - American Funds Growth Fund of America A AGTHX	A	Dividend	J	T					
92. - American Funds New Economy Fund A ANEFX	A	Dividend	J	T					
93. - American Funds Tax Exempt Fund of VA A TFVAX	B	Dividend							
94. - American Funds Fundamental Investors A ANCFX	A	Dividend	J	T					
95. - American Funds Bond Fund of America A ABNDX	A	Dividend	J	T					
96. Mass Mutual VULG Guaranteed Principal	A	Interest	L	T					
97. Mass Mutual VULG American Funds Growth-Income		None	J	T					
98. Mass Mutual VULG Fidelity Contrafund		None	J	T					
99. Mass Mutual VULG DWS Small Cap Index		None	K	T					
100. Mass Mutual VULG MML Small/Mid Cap Equity		None	J	T					
101. Keough #1									
102. - Fidelity Diversified International FDIVX	A	Dividend							

1. Income Gain Codes:	A = \$1,000 or less	B = \$1,001 - \$2,500	C = \$2,501 - \$5,000	D = \$5,001 - \$15,000	E = \$15,001 - \$50,000
(See Columns D1 and D4)	F = \$50,001 - \$100,000	G = \$100,001 - \$150,000	H1 = \$150,001 - \$55,000,000	I2 = More than \$5,000,000	
2. Value Codes	J = \$15,000 or less	K = \$15,001 - \$50,000	L = \$50,001 - \$100,000	M = \$100,001 - \$250,000	
(See Columns C1 and C3)	N = \$250,001 - \$500,000	O = \$500,001 - \$1,000,000	P1 = \$1,000,001 - \$5,000,000	P2 = \$5,000,001 - \$25,000,000	
3. Value Method Codes	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash Market	
(See Column C2)	U = Book Value	V = Other	W = Estimated		

**FINANCIAL DISCLOSURE REPORT**  
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<b>Name of Person Reporting</b>	<b>Date of Report</b>
Srinivasan, Srikanth	01/03/2013

**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-68 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
103. - American Beacon Large Cape Val Inv AAGPX	A	Dividend							
104. - American Funds Growth of America Class R5 RGAFX	A	Dividend							
105. - Rainier Sm/Mid Cap RIMSX	A	Dividend							
106. - Buffalo Sm Cap Stock BUFSX	A	Dividend							
107. - PIMCO Total Return Instl PTTRX	B	Dividend							
108.									
109.									
110.									
111.									
112.									
113.									
114.									
115.									
116.									

1. Income Gain Codes:	A = \$1,000 or less	B = \$1,001 - \$2,500	C = \$2,501 - \$5,000	D = \$5,001 - \$15,000	E = \$15,001 - \$50,000
(See Columns B1 and D4)	F = \$50,001 - \$100,000	G = \$100,001 - \$1,000,000	H1 = \$1,000,001 - \$5,000,000	H2 = More than \$5,000,000	
2. Value Codes	J = \$15,000 or less	K = \$15,001 - \$50,000	L = \$50,001 - \$100,000	M = \$100,001 - \$250,000	
(See Columns C1 and D3)	N = \$250,001 - \$500,000	O = \$500,001 - \$1,000,000	P1 = \$1,000,001 - \$5,000,000	P2 = \$5,000,001 - \$25,000,000	
3. Value Method Codes	P3 = \$25,000,001 - \$50,000,000	R = Cost (Real Estate Only)	S = Assessment	T = Cash Market	
(See Column C2)	Q = Appraisal	U = Book Value	V = Other	W = Estimated	

**FINANCIAL DISCLOSURE REPORT**  
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**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.** *(Indicate part of report.)*

**FINANCIAL DISCLOSURE REPORT**  
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Name of Person Reporting	Date of Report
Srinivasan, Srikanth	01/03/2013

**IX. CERTIFICATION.**

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: **s/ Srikanth Srinivasan**

**NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)**

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
Suite 2-301  
One Columbus Circle, N.E.  
Washington, D.C. 20544

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks	1	164	200	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities - see schedule	1	532	700	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable - personal residence		961	900
Real estate owned - personal residence	1	700	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		11	000				
Cash value-life insurance		98	100				
Other assets itemize:							
Thrift Savings Plan		33	700				
				Total liabilities		961	900
				Net Worth	3	577	800
Total Assets	4	539	700	Total liabilities and net worth	4	539	700
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

**FINANCIAL STATEMENT**  
**NET WORTH SCHEDULES**

Listed Securities

*Individual Retirement Account*

Spartan 500 Index Fund	\$ 35,700
ASTON/River Road Independent Value Fund	9,900
Aberdeen Emerging Markets Fund	6,700
Columbia Dividend Opportunity Fund	32,500
Columbia Select Large Cap Growth Fund	54,500
Delaware Value Fund	36,500
DoubleLine Total Return Bond Fund	24,900
Dreyfus Bond Market Index Fund	18,900
Driehaus Active Income Fund	17,900
Federated Intermediate Corp Bond Fund	6,200
ALPS/Red Rocks Listed Private Equity Fund	7,500
Merk Hard Currency Fund	7,600
Forward EM Corp Debt Report	10,700
JPMorgan Strategic Income Opportunities Fund	12,200
JPMorgan High Yield Bond Fund	6,200
MFS International Value Fund	32,600
Morgan Stanley Institutional Global Real Estate Fund	9,300
PIMCO Total Return Fund	10,400
RS Global Natural Resources Fund	20,100
RidgeWorth Mid-Cap Value Fund	26,600
RiverNorth Core Opportunity Fund	22,700
RiverPark Short Term High Yield Fund	6,200
T. Rowe Price Growth Stock Fund	53,300
T. Rowe Price International Stock Fund	26,700
TCW Dividend Focused Fund	36,300
TCW Small Cap Growth Fund	8,900
Touchstone Focused Equity Fund	12,700
Wasatch International Opportunities Fund	14,500
Wasatch Emerging Markets Small Cap Fund	22,000
Wasatch Frontier Emerging Small Countries Fund	9,500
Fidelity Cash Reserves	7,900

*Brokerage Account #1*

Spartan 500 Index Fund	18,200
Fidelity Intermediate Municipal Income Fund	57,300
ASTON/River Road Independent Value Fund	5,700
Aberdeen Emerging Markets Fund	5,200
Columbia Dividend Opportunity Fund	22,400
Columbia Select Large Cap Growth Fund	29,100
Delaware Value Fund	18,600
DoubleLine Total Return Bond Fund	23,000
Driehaus Active Income Fund	9,400



ALPS/Red Rocks Listed Private Equity Fund	4,600
Merk Hard Currency Fund	7,000
Forward EM Corp Debt	8,300
JPMorgan Tax Aware Real Return Fund	21,200
MFS International Value Fund	17,900
Merger Fund	8,200
Morgan Stanley Institutional Global Real Estate Fund	7,200
Northern Intermediate Tax-Exempt Fund	57,200
RS Global Natural Resources Fund	12,300
RidgeWorth Mid-Cap Value Fund	13,100
RiverNorth Core Opportunity Fund	17,400
T. Rowe Price Growth Stock Fund	25,600
T. Rowe Price International Stock Fund	13,400
TCW Divided Focused Fund	18,500
TCW Small Cap Growth Fund	5,100
Touchstone Focused Equity Fund	6,400
Wasatch International Opportunities Fund	7,700
Wasatch Emerging Markets Small Cap Fund	10,600
Wasatch Frontier Emerging Small Countries Fund	4,800
Wells Fargo Ultra Short-Term Municipal Income Fund	4,700
Fidelity Cash Reserves	6,400
<i>Brokerage Account #2</i>	
American Funds Bond Fund of America Class A	900
American Funds Fundamental Investors Class A	900
American Funds Growth Fund of America Class A	600
American Funds New Economy Fund Class A	600
American Funds Tax Exempt Bond Fund of America Class A	1,100
<i>Roth IRA #1</i>	
American Funds AMCAP Fund Class A	4,200
American Funds Capital World Growth & Income Fund Class A	4,300
American Funds Income Fund of America Class A	4,200
American Funds New World Fund Class A	2,200
American Funds SMALLCAP World Fund Class A	2,200
American Funds Washington Mutual Investors Fund Class A	4,200
<i>College Savings Plans</i>	
American Funds AMCAP Fund -529A	120,800
American Funds American Balanced Fund -529A	119,600
American Funds American Mutual Fund -529A	15,600
American Funds EuroPacific Growth fund -529A	14,600
American Funds New Perspective Fund -529A	61,600
American Funds Growth Fund of America 529A	95,600
American Funds Washington Mutual Investors Fund -529A	5,400
Total Listed Securities	\$1,532,700

Senator COONS. Thank you very much.

We are going to move to five-minute questioning rounds, and I would also like to ask unanimous consent to enter into the record letters of recommendation that have been received. As I mentioned previously, as former Solicitors General and Principal Deputy Solicitors General, 28 Supreme Court co-clerks from each of the nine Justices, as well as the North American South Asian Bar Association, the Hispanic National Bar Association, and the National Asian Pacific American Bar Association, all of them have submitted for the record letters of recommendation.

[The letters of recommendation appear as submissions for the record.]

Senator COONS. You have participated in a substantial amount of litigation before the Supreme Court. By my count, your name appears on at least 50 Supreme Court briefs. You have won and lost your share of cases. Many of the cases in which you have participated have dealt with issues, or laws at least, that are likely to be considered or that may come up in your service on the court, should you be confirmed: terrorism, detention, the Alien Tort Statute, the Voting Rights Act, First Amendment.

How will you ensure that positions you have developed as an advocate will not unduly influence your judgment if confirmed to this court?

Mr. SRINIVASAN. Thank you, Mr. Chairman. I think there is a fundamental point about being a lawyer who takes positions on behalf of the client, and that is that you are duty bound to make arguments that are in service of your client's interests and to zealously advocate on your client's behalf.

But one thing that does not factor into that is one's personal views. My personal views have not played a role in the arguments that I have made on behalf of clients across a broad array of cases, as you mentioned, on a broad array of issues. And my personal views certainly would not play a role if I were fortunate enough to be confirmed to the position for which you are considering me today.

Senator COONS. Could you just briefly for the Committee describe your judicial philosophy?

Mr. SRINIVASAN. Sure. I guess I would say this, Senator: I do not have an overarching, grand, unified judicial philosophy that I would bring with me to the bench, if I were lucky enough to be confirmed. I guess I approach it, in some sense, from the perspective of a litigator. I have had cases that involve different issues, and what I have tried to do in that capacity is to bring to bear the legal principles, the specific precedents, the other sources of law that are relevant to that particular issue and how you would apply the law to the facts of that specific case. And so it is a case-by-case approach.

And I think that is the same kind of approach I would use were I to be confirmed to be a judge. There is no grand, unifying theory. I think the guiding principle to me, though, would be an impartial adherence to the rule of law, and I would try to abide by that principle for every case that would come before me.

Senator COONS. The Solicitor General's Office has sometimes been referred to sort of broadly as "the Tenth Justice" because the

Court relies on that office at times to help it parse really unusually difficult legal issues and to provide the Court as well, of course, with the official legal position of the United States. In many ways, it is a unique role within the legal profession and requires the office to discern the unitary legal position of a decidedly non-unitary political entity.

What are some of the challenges you have faced in the Solicitor General's Office in discerning the genuine interest or the needs of your client?

Mr. SRINIVASAN. Thank you, Senator. I guess I will start where you started, which is the notion that the Solicitor General is the Tenth Justice. I think former Solicitor General, Seth Waxman, has poignantly noted that he does not ever recall having a tenth vote, so that is one point to be made. But it is a very high honor to serve in this office. I have served for five Solicitors General in the past. I have been in the office four times. I was a summer intern. I was then a one-year fellow. I came back as an assistant to the Solicitor General under the prior administration, and I am now back in my capacity as a Deputy Solicitor General. And it is an incredible honor and privilege to represent the United States of America before the Supreme Court, and I think some of the sentiments that you have outlined in the question you posed to me are manifested in the role that we have. And we do have a duty of candor and honesty to this Court because we view ourselves to have a long-term relationship with the Court. And our advocacy on behalf of our client is done best when the Court has a strong degree of trust in the arguments that we are presenting, and that is what we strive to do.

Senator COONS. What is the role of precedent in making important or difficult legal decisions? And how would you balance the importance of respect for precedent versus personal experience or other sources of information or insight in making difficult judicial decisions?

Mr. SRINIVASAN. I think it is a duty of a judge to abide by precedent. I do not believe that is a negotiable principle. And for the position to which I have been nominated on the Court of Appeals for the DC Circuit, that would, of course, include the precedents of the Supreme Court and also include the precedents of the DC Circuit. And abiding by precedent is an important principle because it promotes predictability and stability in the law, and predictability and stability in the law are things that I think people who are affected by the legal system come to rely on, and certainly parties and advocates before the Court rely on it as well.

Senator COONS. Thank you.

Senator Grassley.

Senator GRASSLEY. I would like to start by asking you a couple questions that you have discussed and knew that I was going to ask, and the purpose is just to get an answer for the record. I will give background for other people that you know about. These questions involve your involvement with the quid pro quo deal where the Justice Department dismissed two False Claims Acts, and these cases were against the city of St. Paul, Minnesota, in exchange for the city dismissing a case where the Department was not a party that was pending before the Supreme Court.

If you wonder about my interest in the False Claims Act, I got that legislation passed in 1986, so I follow it pretty closely. My staff has interviewed you related to the issue, so these are the questions:

As I understand it, you were the lawyer in the Solicitor General's Office who was primarily responsible for handling the *Magner* appeal before the Supreme Court. Is that right?

Mr. SRINIVASAN. That is correct.

Senator GRASSLEY. Mr. Perez, Assistant Attorney General for the Civil Rights Division, reached out to you in December 2011 and asked—and I am paraphrasing—as a practical matter, how a party would go about withdrawing a case from the Supreme Court. Is that right?

Mr. SRINIVASAN. That is right, Senator. I would like to elaborate on that, if I might, but I do not want to interrupt you.

Senator GRASSLEY. Well, I think you should have your right to elaborate.

Mr. SRINIVASAN. I appreciate that. He did put that inquiry to me. If I am recalling the chain of correspondence to which you are referring, I think that inquiry came in the context of a conversation about whether the regulations that were pending and that might be adopted would have an effect on the pendency of the case before the Court. And I believe that is reflected in the correspondence, and it is with that backdrop in mind that we had that exchange.

Senator GRASSLEY. Okay. Finally, it is my understanding that you did not know anything about the deal that Mr. Perez struck with the city of St. Paul where he agreed to decline intervention in the False Claims Act in exchange for the city withdrawing *Magner* from the Supreme Court until after Congress started looking into the matter in August 2012. Is that right?

Mr. SRINIVASAN. I had no knowledge of what you have described. That is correct.

Senator GRASSLEY. Okay. You have been deeply involved in the cases regarding the *Defense of Marriage Act*. You participated in writing briefs as well as oral arguments. Were you also involved in any internal policy or strategy discussions regarding the administration's decision to abandon defense of *DOMA*?

Mr. SRINIVASAN. Senator, that decision was made and communicated to Congress in February, I believe, of 2011, if I have my year correctly, and I was not in the government at that point. I came on board with the government several months later.

Senator GRASSLEY. Okay. Do you agree with the administration's position that no reasonable argument could be made in defense of *DOMA*'s constitutionality?

Mr. SRINIVASAN. Senator, I am hesitant to give any personal views because—for a couple of reasons, if I might.

First, my personal views have never been relevant to positions I have taken on behalf of a client, and they would certainly not be relevant to any of my jobs, my fulfillment of my responsibilities were I fortunate enough to be confirmed.

But the other thing that is giving me a little bit of pause here is that, of course, these issues are pending before the Supreme Court right now, and I am representing a party before the Court

in the capacity as counsel. So I am hesitant to speak to whether I agree or disagree with anything.

Senator GRASSLEY. Okay. I am interested in your views on the distinction between enforcing a statute and defending a statute. This was obviously on the minds of the Justices at the recent argument. Can you shed some light on how, if confirmed as a judge, you would at any time in the future approach this issue of enforcing a statute versus defending a statute?

Mr. SRINIVASAN. Senator, it would depend on the particular context in which the issue arose before me. I do not know that I have any blanket rule that I would apply. I guess I would want to listen very, very carefully to the arguments that were presented before me in the context of a particular case.

Senator GRASSLEY. Who has the responsibility to ensure that laws are faithfully executed like the Constitution requires? Do the courts have any role to play?

Mr. SRINIVASAN. In assuring that the laws are faithfully executed?

Senator GRASSLEY. Yes.

Mr. SRINIVASAN. They have a responsibility to play in adjudicating concrete cases or controversies that are brought before them, and if those concrete cases or controversies involve the execution of the law by the Executive, for example, then they have the responsibility to pronounce on the propriety or impropriety of that under the law.

Senator GRASSLEY. When is it appropriate for an administration to enforce a law but not defend it?

Mr. SRINIVASAN. Senator, that issue is before the Supreme Court now, and what I can do is give an account of the position that we have taken on behalf of a client before the Supreme Court. And the arguments that have been made are that the President has the flexibility under the Take Care Clause to make the assessment that the President made in this case, which is that this statute will not be defended, but it will be continued to be enforced out of respect for the Congress that enacted the law, the President that signed it, and out of respect for the role of the judiciary in pronouncing on what the law is.

Senator GRASSLEY. If the President fails to enforce a law, what recourse is available to interested parties, the Congress, or the courts?

Mr. SRINIVASAN. If the President fails to enforce the law?

Senator GRASSLEY. Yes.

Mr. SRINIVASAN. It would depend, Senator, because in some circumstances in which the President decided not to enforce a law—and, of course, these are going to very rare situations. In some situations, there will be occasions for a case to come before the courts in any event because the law that is not being enforced by the President might become the subject of, for example, a civil suit between two private parties. It is hard to talk about concrete particulars without knowing the precise circumstances, but one could envision that a dispute would, nonetheless, come before the courts in a way that the courts would have an opportunity to pronounce on it.

But I think one of the considerations that the President took into account on this occasion is that non-enforcement would have the tendency to make judicial review more difficult, and so he chose to enforce the law out of respect for the judiciary.

Senator GRASSLEY. On another point, what is your understanding of the definition of “quasi-suspect groups”?

Mr. SRINIVASAN. Quasi-suspect groups, as I understand it, Senator, is a—it speaks to the level of scrutiny that would be applied under the Equal Protection Clause when assessing a classification, a law that classifies with respect to that group.

Senator GRASSLEY. And what scrutiny is afforded those groups?

Mr. SRINIVASAN. A heightened level of scrutiny would be applied to quasi-suspect groups, and if you do not meet quasi-suspect or suspect status, then ordinarily you would trigger rational basis review rather than a heightened level of scrutiny.

Senator GRASSLEY. I have just one more question, and I ask this of most every judge dealing with international law. You wrote a brief on behalf of Rio Tinto Limited, arguing that corporations are not liable for violations of international norms relating to human rights. What are your current views on this issue? And how would you approach it if you were confirmed as circuit judge?

Mr. SRINIVASAN. Thank you, Senator. The questions about the scope and applicability of the Alien Tort Statute are currently pending before the Supreme Court in the Kiobel case, and I guess what I can say about that is that decision is likely to come down before the end of this term, and presumably the Court will announce in principles that would be binding on the Court itself and on lower courts. And certainly once we see what the Court held, if I am fortunate enough to be confirmed, I would faithfully apply that precedent.

Senator GRASSLEY. Thank you.

Mr. SRINIVASAN. Thank you.

Senator GRASSLEY. Thank you, Mr. Chairman.

Senator COONS. Thank you, Senator Grassley.

Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Chairman.

Welcome. I am delighted that you are here. I intend to support your candidacy. I think you are immensely talented and qualified. My concern at this hearing really has to do with the larger question that we as a Senate face of how we are going to treat judges.

Your predecessor was, I think, also—your predecessor in a lineup for the DC Circuit, Caitlin Halligan, I think was also immensely talented and capable, and was filibustered not once but twice. My view of that situation is that we had been operating under an agreement, the Gang of 14 agreement, that held off the nuclear option, so-called, that allowed for a parliamentary maneuver that could bring a candidate before the Senate and produce a simple majority vote.

The agreement was that there would be no filibusters of nominees unless there was some extraordinary circumstance. Now, the only thing that was extraordinary about Caitlin Halligan was the amount of her talent. So my view is that the Gang of 14 agreement has now been broken, and that opens the door to, as far as I am concerned, the nuclear option.

I regret it because I think that the agreement was a sensible outcome and served the Senate well. But the question is: When one side breaks that agreement, what do you do? Do you ignore it? I do not think we can because they will just continue to break the agreement, and people like you who bring no extraordinary circumstances other than the extraordinariness of your talent to the judiciary end up getting filibustered and defeated. And I do not think that is acceptable.

So I am not comfortable. What do you do then with the so-called nuclear option? Does it apply to all matters? Does it apply to all judges, all seats? Does it apply to all courts?

My feeling at this point is that I am inclined to view violations of the Gang of 14 agreement and the response to those violations as something that should be cabined court by court. So it would not be my intention to support a nuclear option, parliamentary method to get to a simple majority vote on the Ninth Circuit or on the Eastern District of Virginia district court or anything else. I think that the way I think that we should proceed is that, court by court, as the agreement is violated, it then becomes fair game to pursue whatever parliamentary measures are appropriate with respect to candidates for that court.

So I think it is very unfortunate that we had the experience we did with Ms. Halligan. Unless the new normal is orthodox compliance with all right-wing ideology, then there is no case to be made for an extraordinary circumstance in her case.

So there we stand. The rule is broken or the agreement is broken. We have to decide what to do about it, and my personal feeling is that what we should do about it is to leave all parliamentary remedies available as to those courts for whom the candidates had that Gang of 14 agreement broken. And I wanted to take my time here, because it is relevant to us, to say that, and I will close by saying that I actually think that this Committee has done a very good job of moving judges along. I think that Ranking Member Grassley, before him Ranking Member Sessions, and previous Ranking Members have moved candidates effectively through the Committee. The problem has always been on the floor. They go into the hostage pool on the floor, and they wait and they wait and they wait and they wait and they wait, and they become pawns in other struggles, and in some cases they never clear at all.

So I do not say this with any ill will toward other Members of the Committee, but I do think that you cannot allow agreements to be broken and have there be no consequences. And, on the other hand, you cannot allow the consequences to a broken agreement to be unlimited and unmeasured. And I just want to let my colleagues know where I stand on what I believe is the breaking of the Gang of 14 agreement with respect to the DC Circuit.

And I thank you all, and I have no questions for the wonderful candidate.

Senator COONS. Thank you, Senator Whitehouse.

Senator HATCH.

Senator HATCH. Well, thank you, Mr. Chairman. Welcome to the Committee, Sri. We are happy to have you here. You are a very impressive person as far as I am concerned.

With regard to the Gang of 14, that did apply to the 109th Congress, not necessarily after that. I do not believe judges should be filibustered, so I am limited when I disagree to vote "Present," which is what I have had to do, and I get criticized for that as well. But the fact of the matter is that I believe that advice and consent means exactly what it says. We can give advice, and our consent is determined by a vote up and down. But, unfortunately, both sides have filibustered. It was started by Democrats, and Republicans have taken it up as well.

In one of the cases you argued before the Supreme Court while in private practice was *Hosanna-Tabor v. EEOC*. You argued that employment discrimination laws applied to religious organizations in exactly the same way that they do to secular ones. At least that is the way I interpreted it. The Supreme Court voted 9–0 to reject your view, calling it "untenable." In fact, the Chief Justice wrote, "That result is hard to square with the text of the First Amendment itself....We cannot accept the remarkable view that the Religion Clauses have nothing to say about a religious organization's freedom to select its own ministers."

Now, under your view—the Court unanimously said the First Amendment provides no more protection to a religious organization than to a labor union or a social club. Now, to be candid, your position in this case really troubles me. And if America's founders thought religious liberty so important that they put multiple protections explicitly in the First Amendment, why would that not trump a statute?

Mr. SRINIVASAN. Senator, thank you. Of course, in the *Hosanna-Tabor* case, that was a position that we advanced on behalf of our client.

Senator HATCH. Right.

Mr. SRINIVASAN. And my personal views do not play a role in the positions I advance on behalf of my clients, and I will just start by saying—

Senator HATCH. But can you actually advance something for which you have no real belief?

Mr. SRINIVASAN. Well, I think it is a duty of a lawyer, Senator, to advance the arguments that are best designed to bring about a favorable result for the client.

Senator HATCH. Well, is it a duty of a lawyer, knowing that a client murdered somebody, to advance a case that the client is innocent?

Mr. SRINIVASAN. I would not want to engage in a hypothetical about a criminal case that I was not involved in. I guess what I would say—

Senator HATCH. What would be your personal views, then?

Mr. SRINIVASAN. What I would say is this, Senator, with respect to the *Hosanna-Tabor* case. As the Supreme Court itself explained in its opinion, the question of whether there is a ministerial exception, which was the issue in the case, was an open one before the Supreme Court decided that case. The Court explained that—

Senator HATCH. You believe it was a case of first impression?

Mr. SRINIVASAN. I believe that issue was an issue of first impression before the Supreme Court. The courts of appeals had pronounced on it, but the Supreme Court had not had occasion to pro-



nounce on it. And the Supreme Court explained at the outset of its opinion that its prior precedents did not establish a rule one way or the other. And it reached the conclusion that there was a ministerial exception, and, of course, that was to the detriment of my client. But we presented the arguments before the Court that we thought were best designed to bring about a favorable result on our client's behalf.

Senator HATCH. Well, let us say that your personal views were that this is bunk. Would you still advance the interests of that client before the Court?

Mr. SRINIVASAN. I am sorry. I did not quite hear the question. If I—

Senator HATCH. Well, that you disagreed with what the client's position was, but you felt obligated as an attorney to argue the client's position. Would you have argued that?

Mr. SRINIVASAN. I argue positions before courts on behalf of clients without regard to my personal views, and that is the same philosophy I would take to the bench.

And with respect to the *Hosanna-Tabor* decision in particular, of course, now that we know the position of the Supreme Court on that and we have a holding, that precedent, like any precedent of the Supreme Court, is one that I would seek to apply very faithfully if an issue of that variety were to come before me were I to be confirmed.

Senator HATCH. Okay. Let me ask one other question. Let me tell you what bothers me about your office refusing to support the *Defense of Marriage Act*, which was passed overwhelmingly by both Houses of Congress and bipartisan votes.

Now, the reasonable arguments you had a duty to make to defend this statute include the legal standard that would help the Court uphold it. Your office, in fact, made that very argument in other cases defending *DOMA*, by the way. But then you instead started arguing for a legal standard that would help the Court strike down *DOMA*, the *Defense of Marriage Act*.

It looked like you had changed clients and were making this move based more on political considerations than on your institutional duty. Am I wrong to look at it that way?

Mr. SRINIVASAN. I believe so, Senator, with respect. I was not in the government at the time that the prior arguments were made. I came on board in the government by a time at which the President had made the determination that heightened scrutiny applied to the *Defense of Marriage Act* and that the law did not withstand scrutiny under that standard. And that is the argument that we have been presenting.

Senator HATCH. Mr. Chairman, may I ask just one more question? Listen, I am really impressed with you. I think you are terrific.

Mr. SRINIVASAN. Thank you.

Senator HATCH. And as of right now, some of these things bother me, but I want to support you. Let me just ask one more question.

You bring a record of advocacy to this confirmation process. Great lawyers can make great judges. Do not get me wrong. But I also see judges who never stop being advocates. You have had

that experience, I bet. I have had it. They continue to find ways of achieving results for their clients.

Now, I really am concerned about this. I remember when a Senator on this Committee repeatedly asked a Supreme Court nominee whose side he would be on in different kinds of cases. By the way, I have been asking similar questions. Lawyers take sides. But I never thought that judges should.

How would you shift from being an advocate for a particular answer to a judge responsible for finding the right answer?

Mr. SRINIVASAN. Senator, thank you. I am deeply appreciative of the rule of law, fidelity to the rule of law and the importance of having fidelity to the rule of law. And I guess what I would say about the differences between the role of an advocate and the role of a judge is this: that an advocate is duty bound to be partial. In some ways, partiality is the name of the game when you are an advocate.

I think things shift radically when you become a judge, if I am fortunate enough to be confirmed. At that point the duty is impartiality. And I am deeply appreciative of that, and I can assure you that, if I were to be confirmed, I would have an impartial adherence to the rule of law. And I do believe that my advocacy on behalf of a broad array of clients on a broad array of issues expressing a broad array of perspectives has left me very, very open-minded, and to me, open-mindedness and objectivity are the key principles of judicial action, and I would seek to abide by that.

Senator HATCH. Does that philosophy justify advocating for something in which you do not have any belief?

Mr. SRINIVASAN. I am sorry. As a lawyer?

Senator HATCH. As a lawyer.

Mr. SRINIVASAN. I believe lawyers are bound to make arguments that are designed to bring about a favorable result for the client as long as they are professionally responsible arguments. And, of course, every argument that a lawyer makes in court has to be a professionally responsible one, and I hope that I and believe that I have adhered to that standard.

Senator HATCH. Do you believe a lawyer can take on a case that literally he does not believe in but give every effort toward advocacy in that case?

Mr. SRINIVASAN. Well, I think what would have to happen in that situation, Senator, is the lawyer would have to ask him- or herself some really hard questions about whether they are ideally positioned to take on that case, because if they have a strength of a belief that calls into question their ability to be an effective advocate on the client's behalf, I think they are probably best serving their client—their would-be client would be best served by having the representation go elsewhere.

So I agree with you, Senator, that a lawyer has to have the ability to put aside one's personal beliefs to an extent that enables him or her to be an effective advocate on behalf of his client.

Senator HATCH. Can I just ask one more, if I could? I am taking advantage. I apologize.

Mr. SRINIVASAN. Not at all.

Senator COONS. The Senator from Utah is——

Senator FRANKEN. I have to go now, so——

Senator HATCH. Well, if you have to go, I will be glad to defer. I just have one last question.

Senator FRANKEN. I will try to come back.

Senator HATCH. Look, I will defer.

Senator COONS. Senator Franken, if you—

Senator HATCH. I am sorry that that occurred, because I would have easily deferred. But let me just ask you one other question. Here is a contrast to consider.

Look, I am impressed. I have been impressed. I was impressed before I came here. I wanted to see you and see what you are like. I can see your lovely family. You are clearly a very good advocate, a very good lawyer. I think highly of you, and I am very likely to support you. But these are legitimate questions, and they are good questions that really may make your trip through this process a little bit easier.

Now, here is a contrast to consider. On the one hand, we had an appeals court nominee before this Committee a few years ago who had written that the Constitution's meaning can be found in such things as evolving social norms and practices and changing cultural understandings. On the other hand, a federal appeals court recently held this: "When interpreting a constitutional provision, we must look to the natural meaning of the text as it would have been understood at the time of the ratification of the Constitution."

Now, one way maximizes a judge's control over the Constitution, while the other way minimizes it, in my opinion. In general, which of these two would better identify your own view?

Mr. SRINIVASAN. Senator, I think the latter rather than the former, and I would be guided by Supreme Court precedent on the method of constitutional interpretation. And as I understand those Supreme Court precedents, they tend toward the latter approach, and I am thinking of decisions like *Heller*, for example, that I would look to in outlining how one is supposed to go about applying particular provisions of the Constitution. But first and foremost, Senator, I would be guided by precedent.

Senator HATCH. I think that is very good. Mr. Chairman, I apologize. I got you in a little difficulty there. But I think somebody who has been on this Committee for 37 years, and when we are the only ones here, I really should be able to ask some pertinent questions that might help your confirmation process.

Mr. SRINIVASAN. Thank you, Senator. I think part of having a judicial temperament is knowing when not to talk, and this may be one of those occasions.

[Laughter.]

Senator HATCH. Now, are you referring to me or you?

[Laughter.]

Mr. SRINIVASAN. No. Me. Me. Just me.

Senator HATCH. Congratulations for this nomination. I think you are going to make a great circuit court of appeals judge, and I intend to support you based upon what we are talking about here. There are differences between being an advocate and a judge, and I think you understand them.

Mr. SRINIVASAN. Absolutely.

Senator HATCH. Thanks so much. Good to see you.

Mr. SRINIVASAN. Thank you.

Senator HATCH. Thank you, Mr. Chairman.

Senator COONS. Thank you, Senator Hatch.

And if I might for a moment, before we turn to Senator Lee, just on this broader point, you have worked for, advocated for a very broad range of clients in a very broad range of cases. There are other religion cases—*U.S. v. Trunk*—where almost exactly the opposite, if one were to ascribe to some position, you have got clients on whose behalf you have worked that have quite different views. There are some on the left who have also raised concerns about your attempts to establish on behalf of a client that corporations cannot be held liable under the Alien Tort Statute or for the *Torture Victims Protection Act*. I know of the importance of these. I disagree with the positions advocated in *Rumsfeld v. Padilla* that the President has an inherent right—an inherent authority, excuse me, to detain a U.S. citizen captured on U.S. soil indefinitely as part of the war on terror. But in my view, I do not think these positions are any reason to oppose your nomination because a lawyer's arguments on behalf of a client should not be arguments which are then confused with the beliefs of the lawyer. And I hope my colleagues will take that into account in reflecting on your nomination.

So if I might, Senator Lee.

Senator LEE. Thank you very much, Mr. Chairman. And with your leave, Mr. Chairman, I have got a brief written statement that I would like to submit in regard to the DC Circuit caseload issue that was being discussed at the beginning of the hearing.

Senator COONS. Without objection.

Senator LEE. Thank you, Mr. Chairman.

[The prepared statement of Senator Lee appears as a submission for the record.]

Senator LEE. And thank you very much, Mr. Srinivasan, for joining us and for your family joining us as well.

Mr. SRINIVASAN. Thank you.

Senator LEE. In a 2008 op-ed, you wrote that an Indiana law requiring voter photo identification exists to prevent a type of fraud that appears to be imaginary. Later in that same op-ed in 2008, you argued that independent courts should not leave to legislators the final word on the rules by which legislators themselves are elected or, alternatively, ousted.

At a time when partisan suspicion about the electoral process is potentially corrosive, the court needs to exercise its independent judgment about laws such as Indiana's and guard against unfair burdening of the right to vote.

Do you still believe that in-person voter ID fraud is imaginary, as you described it in 2008?

Mr. SRINIVASAN. Senator Lee, if I could just place that article in context, if I might. That article, as the description of the authors indicate, was done on behalf of—in our capacity as lawyers advocating on behalf of a client. I believe that article came out on the day of oral argument, if I am not mistaken, and it was a continuation of the representation that we had undertaken in connection with that case. We had written a brief on behalf of a number of groups challenging the constitutionality of the voter ID law in particular that was at issue. And the submission of that article was

part and parcel of that representation. So I would view that article through the lens of a lawyer acting as an advocate on behalf of a client and would not read into it anything more than that.

With respect to the arguments we made in the brief and then reiterated in that article, I would just make two points.

One is that our brief made clear that there is a compelling interest in stamping out voter fraud. There is that compelling interest. The point we were making on behalf of our client in that case was that there was a particular species of voter fraud that was implicated by the Indiana law, what you accurately described as in-person impersonation fraud. And the point we were making was that that species of voter fraud had not been seen as a matter of historical record in the State of Indiana.

And I would just note that the lead opinion for the Supreme Court in the *Crawford* case, which is the opinion, obviously, that resulted from this, noted that in the history of Indiana there had been no recorded instances of in-person impersonation fraud. And then they noted that there had been—I think they described it as “scattered instances” elsewhere, and the Court, of course, went on to uphold the facial constitutionality of the statute against the argument we were making.

Senator LEE. Now four and a half or five years later, where you are not representing that client at the moment, we are having a conversation here, do you regard voter fraud as an imaginary problem?

Mr. SRINIVASAN. Voter fraud is not, Senator Lee, and I think even at that point, the point we made in our brief was that voter fraud is something as to which there is a compelling governmental interest in stamping out. And I would say this as an add-on, which is that the Supreme Court, of course, remanded its decision in the *Crawford* case, sustaining the facial constitutionality of that law. And I would abide by that decision like I would abide by any other precedent of the Supreme Court.

Senator LEE. Okay. You also commented in that same article that even a minimal impact on voters is too much to justify a photo ID law. I question whether this prescribes a judicially manageable standard. I mean, who and how would you determine or define what a “minimal impact” is?

Mr. SRINIVASAN. It is a very fair question, Senator Lee, and, candidly, if you look at the opinion that came from the Court in the *Crawford* case, if I am remembering correctly, it prescribed a balancing approach where you balance the burden against the interests that are advanced by the law. And so I think it is just incumbent upon the parties before the Court to explain how those considerations are balanced in the context of a specific case. But I do not think that what emerges from that is a black-and-white rule that is readily applicable to any context.

Senator LEE. Okay. So I think I am understanding you. I think what you are saying is you would not disagree with me if I were to say that is not a shining example of a judicially manageable standard.

Mr. SRINIVASAN. I guess given my current role as an advocate on behalf of the United States before the Supreme Court, I am hesitant to—

Senator LEE. Understood.

Mr. SRINIVASAN [continuing]. Characterize the Supreme Court decision. I just meant that the standard they prescribed was a balancing approach.

Senator LEE. Understood. Earlier you were asked whether you have a judicial philosophy, and you sort of indicated that you do not necessarily have a judicial philosophy. But does this mean that you would not consider yourself a textualist? Or if you do not consider yourself a textualist, what do you consider yourself? An intentionalist or a purposivist? Any of those “insider tradings”?

[Laughter.]

Mr. SRINIVASAN. I think some people may have “ist” descriptions of me. But I guess I do not know that I have one description that I would apply as an overarching approach.

Senator LEE. Not even a textualist?

Mr. SRINIVASAN. Well, textualism certainly, Senator Lee, in the following sense: that if you are talking about interpreting a statute, we are engaged in the enterprise of statutory interpretation, absolutely first and foremost one starts with the text of the statute, and one may end with the text of the statute. I think that is set forth in Supreme Court precedent, and I would apply that precedent faithfully, look to the words to try to divine what Congress’ intent was, and very often the words are going to be the beginning and the end of the answer.

Senator LEE. Okay. I understand my time has expired, but I do want to follow up on this one thought to make sure I grasp your answer there. When you say one starts with the text and one may end with the text, can you tell me in what circumstances you would not start and stop with the text?

Mr. SRINIVASAN. Well, for example, one context might be where an administrative agency is implementing a law, and so you would look to the text of the statute to determine whether what the agency is doing is within the scope of reasonableness. And if the agency is doing that, then under the *Chevron* decision and under its progeny and the applicable decisions of the DC Court of Appeals, I think you would also look to what the agency has done by way of, for example, the regulation that is at issue. That is one example.

Senator LEE. But in circumstances like that, you would start and stop with the text, assuming there is no ambiguity?

Mr. SRINIVASAN. Assuming there is no ambiguity.

Senator LEE. Regardless of contrary indications with regard to the intent.

Mr. SRINIVASAN. Yes. Assuming no ambiguity, yes, absolutely.

Senator LEE. Thank you.

Senator COONS. Senator Cruz.

Senator CRUZ. Thank you, Mr. Chairman. Thank you, Mr. Srinivasan, for being here. I want to thank your family and, in particular, commend the twins for doing a very fine job of sitting through the hearing.

I would note that you and I have known each other a long time, that we clerked together in the Fourth Circuit Court of Appeals, and we have been friends a long time, so I am hopeful that our friendship will not be seen as a strike against you by some.

[Laughter.]

Mr. SRINIVASAN. Thank you.

Senator CRUZ. So I appreciate your diligence in answering the questions here today.

I would like to ask you some questions about how you would approach the job of being a judge and start by asking how you would define "judicial activism."

Mr. SRINIVASAN. I think, Senator, that is a term that has many meanings. To me, what it means is the injection of personal views into judicial decision making, and it is something that judges obviously ought not do, and it is something that certainly I would strive not to do and I believe would not do.

Senator CRUZ. What role do you think originalism should play in interpreting the Constitution?

Mr. SRINIVASAN. Senator, I would be guided by Supreme Court precedent on the application of originalism, and we have certainly seen originalism of sorts applied in a variety of contexts by the Court, and the *Heller* opinion is an example of that. I think *Crawford* may be another example of that. And I would be guided by those precedents and would faithfully adhere to them if issues of that variety were to come before me if I were to be confirmed.

Senator CRUZ. Do you ascribe to the concept of a living Constitution?

Mr. SRINIVASAN. That term probably has a lot of freight associated with it, and I think in the way that I assume, Senator, with respect to your asking the question, I would say no, that the Constitution has an enduring fixed quality to it. And it is one of the geniuses of the Constitution. And I would certainly view the task of constitutional interpretation in that way.

Senator CRUZ. In your judgment, what role, if any, should international law play in constitutional adjudication?

Mr. SRINIVASAN. The Constitution is a domestic document with domestic text and domestic structure, and I would look to the text and structure of the Constitution itself in carrying out the task of constitutional interpretation.

Senator CRUZ. Does that mean that you do not think international law should be deemed relevant, controlling, vis-a-vis constitutional interpretation?

Mr. SRINIVASAN. There are going to be situations, Senator, I think, in which international law would have a role. For example, if there was a question concerning the President's exercise of military authority and you would inform the exercise of that authority by looking to international law of war principles, international law may play a role. But as a general matter, international law would not have certainly dispositive weight, probative weight. I think sometimes we see international law in opinions of the Supreme Court as having kind of a confirming quality for a conclusion that has been reached based on analysis of the text and the structure of the Constitution. And I would look carefully at the Supreme Court decisions that were most applicable and apply them.

Senator CRUZ. There has been a longstanding debate both on the U.S. Supreme Court and on the court to which you have been nominated about the role of legislative history in assessing the import of a statute. What do you think is the proper role of legislative history in judicial decision making?

Mr. SRINIVASAN. With that as well, Senator, with the role of legislative history, I would be guided by precedent. I would look to Supreme Court precedent and applicable precedent of the DC Circuit to determine in the circumstances in which legislative history plays a role. And I know that there are differing views on the part of the Justices on the Supreme Court, on the relevance of legislative history, and exactly in what circumstances, what type of legislative history may be particularly probative. But I would look to those precedents as a guidepost in going about the task of understanding what Congress' intent was.

Senator CRUZ. What is your view of stare decisis? And, in particular, in what circumstances would you be prepared to vote to overrule a precedent of the DC Circuit?

Mr. SRINIVASAN. Well, certainly there would be no capacity to overrule a precedent of the DC Circuit if one is sitting as a panel member. That precedent is binding. And so the question I think would only arise if there were a panel decision and then the court were to take that issue en banc. And if the court were to take the issue en banc, then I think I would apply the principles of stare decisis as set forth by the Supreme Court and the DC Circuit, which is that there has to be a very healthy respect for precedent because of the importance of predictability and stability in the administration of law. And there are only narrow circumstances in which precedent might be overruled: if it has become unworkable, if there are intervening decisions that have called the prior precedent into question, if it has become impracticable, if the legal foundation of the decision has been eroded. But those are very narrow situations, and I think the Supreme Court has set forth that stare decisis is highly, highly important and we ought to abide by precedent in the mine run of situations.

Senator CRUZ. A final question. You had an exchange with Senator Lee about the *Crawford* case in which you represented an amicus. I am curious. Was that representation paid representation or pro bono representation?

Mr. SRINIVASAN. Oh, there are two *Crawford* cases. Sorry. The——

Senator CRUZ. The voter ID case.

Mr. SRINIVASAN. The voter ID case, not the Confrontation Clause case.

Senator CRUZ. Yes.

Mr. SRINIVASAN. The *Crawford* voter ID case was a pro bono representation when I was with my law firm.

Senator CRUZ. And what factors went into your decision to represent that client on a pro bono basis since that is sort of typically different factors from being hired by a client to represent them?

Mr. SRINIVASAN. Senator, I do not remember the particulars. If I am recalling correctly, though, I believe that representation was already in place. It was right when I rejoined the firm. I believe that representation was already in place when I came to the firm, and I was asked to work on the case. So it is a little bit different from a situation in which it came to me initially. But I think taking on pro bono representations, as with other representations, there is a process within the firm to assure that it is in the inter-



ests of the firm to take on the representation and there are no conflicts with existing firm clients and things of that nature.

But one thing that did not factor into it, whether it is a pro bono representation or a paying representation from my own perspective, was my personal views.

Senator CRUZ. I thank you for a very fine job you are doing.

Mr. SRINIVASAN. Thank you, Senator.

Senator COONS. Senator Flake.

Senator FLAKE. Thank you, and thank you for being here. I would ask you about some of the Arizona immigration cases, but I know you are arguing on behalf of a client there, and I will get the same answer, so I appreciate that.

Mr. SRINIVASAN. Thank you.

[Laughter.]

Senator FLAKE. I will be short here.

In Federalist Paper 51, James Madison wrote, "In framing a Government which is to be administered by men over men, the great difficulty lies in this: you must first enable the Government to control the governed: and in the next place oblige it to control itself."

In what ways do you believe our Constitution places limits on government? Just a general question.

Mr. SRINIVASAN. The Constitution places limits on government in a number of ways, Senator. Of course, the enumeration of powers that are allocated to the government, for example, with Congress in Article I, itself has a limiting quality about it, because when Congress enacts a law, it needs to be consistent with the scope of the authority that is granted to it by Article I.

The Bill of Rights and constitutional amendments impose constraints on the lawmaking power, and, of course, the First Amendment imposes limits on government. The Tenth Amendment has been brought into play as well. And so the Constitution as a whole has a variety of mechanisms through which it imposes constraints on the Federal Government, which is what I assumed to be the direction of your question.

Senator FLAKE. And the role of the judicial branch in that orbit?

Mr. SRINIVASAN. The role of the judicial branch, I think, is with a very, very healthy amount of respect for the democratic process, to police those boundaries. And so when the issue comes before the courts in a concrete case or controversy, which itself is a constitutional limitation imposed by Article III, when an issue presents itself to the court in a concrete case or controversy and that issue concerns whether the government has transgressed its power by, for example, enacting a law, it is the role of the judiciary, with a healthy amount of respect for the Congress and for the democratic process, to make sure that Congress acted within its allocated bounds.

Senator FLAKE. Thank you. That is all I have, Mr. Chairman.

Senator COONS. Thank you, Senator.

I am looking for some guidance on whether there are other Members of the Committee who are on their way. I have got plenty of questions, so we may—if you might indulge me for a few more minutes.

I was struck in looking through your extensive resume of Supreme Court litigation, as I referenced before, that you have rep-

resented a very broad range of clients, but you have also, frankly, lost your fair share of cases in——

Mr. SRINIVASAN. Thank you for the reminder.

[Laughter.]

Senator COONS. Humility is always a good thing in public service.

How important is it to you to be right? And if you were outvoted on a three-judge panel, does that mean to you in any way that your legal analysis or your position was wrong?

Mr. SRINIVASAN. Well, Senator, I guess when you do not prevail in a case, you always ask yourself whether you did the best job you could have on behalf of your client. And you look at the opinion, and you are rendered quite humbled by it. But you look first and foremost to assess whether you did your job in the best way, and you try to learn from it.

I think there are situations in which the hand you have been dealt is such that it is a hand with which you cannot win, and I take some solace in that and hope at least some of the adverse results that have befallen me and my clients in the past are attributable to that.

But I would acknowledge that there are undoubtedly situations in which arguments could have been made that maybe were not presented in the best possible way, and certainly we regret the extent to which that has happened. But it is very informative for the judicial role because I think the judicial role depends deeply on vigorous, effective advocacy by both competing sides to a controversy. And it is impossible to do one's task in a good way unless you get the benefit of that. And certainly if I were fortunate enough to be confirmed, I would be hopeful that I would see that.

Senator COONS. Let me ask one other question, if I might. I see my colleague Senator Hirono is just arriving.

In two different cases, the issue of whether a State law implicating immigration policy has been preempted was at issue. In the first, I believe you represented a group of businesses in *Chamber of Commerce v. Whiting* in which you—unsuccessfully, forgive me—argued against an Arizona State law that rescinded State licensure for businesses employing undocumented workers. And then two years later, in *Arizona v. U.S.*, the Supreme Court invalidated another Arizona State law that, among other things, made it a crime for an undocumented worker to apply for a job. Different cases, different standards. Can you just help me square those two rulings, if possible?

Mr. SRINIVASAN. Sure, Senator. I was not a meaningful contributor, I would say, on the second case, and that is out of due respect to the attorneys in the Solicitor General's Office who largely won that victory. I do not want to take credit for something in which I was not really involved. I was recused from a major portion of those proceedings, so I am not as familiar with that as I might. But——

Senator COONS. In *Arizona v. U.S.*?

Mr. SRINIVASAN. In *Arizona v. U.S.*, yes, that is correct. But they involve different statutes, as I recall, because the first case, the *Chamber of Commerce v. Whiting* case, dealt exclusively with the question of employment, and that involved both an express pre-

emption question and an implied preemption question under IRCA, the *Immigration Reform and Control Act*, I believe, and the *Arizona v. United States* case that came along did not involve, as I recall, that statute in particular but involved a different set of considerations. And the Court concluded that at least as to three of the four *Arizona* provisions at issue in that case that they were preempted by federal law.

Senator COONS. Thank you.

Senator Schumer.

Senator SCHUMER. Well, thank you, Mr. Chairman. It is good to see you as Mr. Chairman. I know you are Chairman in a few places. And so you will be Madam Chair if you are not already, the Senator from Hawaii.

Anyway, it is great to be here, and I want to thank our witness for being here.

First I want to say a few words. I want to first say to our witness, after watching the shameful treatment of the last DC Circuit nominee we had before the Senate, a New Yorker, Caitlin Halligan, it is fair to say you are brave to put yourself through this process, and we are all grateful for your bravery.

Now, I thought what happened to Caitlin Halligan was a tragedy. She was exceptionally well qualified, moderate. Opponents of her nomination cherrypicked her long and distinguished record looking for reasons to oppose her, not because of her personally, in my judgment, but because they wanted to see the DC Circuit empty until they could get nominees more to their liking.

This circuit has only seven of 11 people on it. It is a vital circuit. And, in my view—and I will speak frankly—I think the hard right wants to use the DC Circuit to undo all kinds of government decisions. We have seen the DC Circuit strike at environmental laws as they have knocked out EPA laws. We have seen them strike at financial laws as they put great limits untold from before on the SEC. We have seen them strike at the NLRB with their recent ruling on recess appointments.

And to have four vacancies on the DC Circuit, to have President Obama, who is in his fifth year in office, not have a single nominee confirmed, not even an up-or-down vote on a single nominee to the second highest court in the land, is wrong.

And I would simply say to my colleagues on the other side of the aisle, we came to an agreement about not filibustering, not using the filibuster, except in unusual and extreme circumstances. We came to that agreement explicitly with the Gang of 14 several years back. That actually filled the DC Circuit with two very conservative nominees who are still sitting there today. And then we came de facto when we agreed to rules changes. And I cannot imagine what the extraordinary circumstance was against Caitlin Halligan.

And so I just hope they do not put you through this, but it will be a real test, because if they put someone of your qualifications and your moderation and the fact that you have been exemplary, if they do not approve you, let you come to a vote, it will mean they are just totally, totally dedicated to keeping the circuit empty. But it will importune many of us on this side to reconsider rules changes. That is the sad but actual fact of the matter.

So I want to say to you that in many ways you satisfy my three qualities of nominations:

Excellence. You have an excellent background, excellent qualifications, and you have been—you know, throughout your career you have just been superior.

You are moderate. I do not like judges too far right. I also do not like them too far left, because I think judges at the extremes tend to make law as opposed to interpreting the law.

And then diversity. You are the first Asian American in history to serve on the DC Circuit, the first South Asian to serve as a federal circuit judge anywhere. It means—I do not know if he is still here, my friend Preet Bharara, well, if you ever get on the bench, you are not going to be the first.

[Laughter.]

Senator SCHUMER. Provided Mr. Srinivasan makes it and all these horrible things we are worried about do not happen.

So if I looked at your record, Mr. Srinivasan, I would wonder which President nominated you. Could it have been President Bush? Because you were an assistant to the Solicitor General in the Bush administration. You were the Principal Deputy Solicitor General in the Obama administration. Guess who you clerked for? One of the leading conservatives in the American judiciary, Judge Wilkinson on the Fourth Circuit; and then, of course, for Justice O'Connor.

So my questions to you are very simple. I do not have much time left. First, what possible reason could someone have for objecting to your nomination?

[Laughter.]

Senator SCHUMER. And more seriously, what can you say to give comfort to those on the right or on the left who may have questions about your judicial philosophy?

Mr. SRINIVASAN. Thank you. I think I will take a pass on the first question.

[Laughter.]

Mr. SRINIVASAN. It seems like it would be a statement against self-interest.

As to the second, I guess what I can say is this: To me, there may be a tendency on the part of some quarters to view fidelity and appreciation for the rule of law as not an end in itself and as bespeaking a lack of passion about the law. And with all due respect to people who would think that, I think the exact opposite. I think fidelity to the rule of law is essential, and I think much of the progress we have made as a country is due in large part to that, because the rule of law means something here, and the rule of law is always there as a protection for all parties. And I would hope that what I have been able to do in my career and the jobs that I have had and the way that I have conducted my responsibilities so far bespeaks a fidelity to the rule of law that would give comfort to anybody who would come before me, were I fortunate enough to be confirmed. And I think, Senator, that is all I could ask for.

Senator SCHUMER. Well, thank you. And I just saw three more reasons for your nomination. I was not here when you were intro-

duced, but if those are your three children, those are excellent reasons.

Mr. SRINIVASAN. Thank you. I will take credit for the one who is a nephew, but thank you very much.

[Laughter.]

Senator SCHUMER. That is good enough.

Mr. SRINIVASAN. Yes, absolutely.

Senator SCHUMER. Thank you, Mr. Chairman.

Senator COONS. Thank you, Senator.

As Mr. Srinivasan and I were discussing before, anyone who is the father of twins deserves public recognition and the opportunity for service.

[Laughter.]

Senator COONS. Senator Hirono.

Senator HIRONO. Thank you, Mr. Chairman. And, Mr. Srinivasan, it is good to see you again, and your family and friends are here to support you, so we are very appreciative of your desire to continue your service to our country.

I have a question about one of the cases in which you argued. In *Rumsfeld v. Padilla*, you represented the United States in opposition to a habeas corpus filed by Jose Padilla, and the brief argued, among other things, that the district court did not have jurisdiction over the proper response and that the President had authority as commander-in-chief and under the 2001 Authorization for Use of Military Force to order Mr. Padilla's detention as an enemy combatant. And while the Supreme Court did not get to the merits of the case, I was wondering, you know, this case did cause a great concern for a lot of Americans who value civil liberties, and it stands as an example to a number of people as government overreach.

So when you argued the case on behalf of the Bush administration, what was your thinking about the impact of your argument as they related to executive power and the detention power? Specifically, why did you argue that the AUMF included a detention power?

Mr. SRINIVASAN. Senator, thank you. I will say at the outset that I need to be a little careful in this area because these are the sorts of issues, some of which are likely to come before the DC Circuit in particular because it tends to be a venue in which some of these sorts of issues come.

Senator HIRONO. Yes. I appreciate that.

Mr. SRINIVASAN. But I will attempt to address your question in the following way: Of course, I was making arguments, we were making arguments as a legal team on behalf of a client, and with respect to your question about whether the Authorization for Use of Military Force encompasses detention, I think the Supreme Court answered that in the affirmative in the *Hamdi* decision. And so I think it is now settled law that I would apply, were I lucky enough to be confirmed, that the Authorization for Use of Military Force does encompass detention as part and parcel of the military authority that is assigned to the President.

Senator HIRONO. And, of course, we are now talking about whether or not that authority extends to basically targeted killings, so that is another area that you may be confronted with.

Now, I know that you have argued a lot of cases before the Supreme Court, and, in fact, I heard you argue the *DOMA* case not too long ago. And you are known for never taking up any notes, so how do you prepare to go before these formidable Justices without any notes?

Mr. SRINIVASAN. Well, I guess I would say this: You do not have much of another opportunity to look at anything because it is a very active Court and they are highly, highly engaged at argument. And it is a tremendous privilege to get to argue before them. And I think many of us who have had the privilege of arguing before the Court have had no occasion to look down, and so if there is no occasion to look down, it really does not matter what you have down there.

[Laughter.]

Senator HIRONO. That is true, but at the same time, you really have to prepare. I am sure you prepare hours for your arguments because you are very good at it, I have to say.

Mr. SRINIVASAN. Thank you.

Senator HIRONO. I was listening to Senator Schumer, and, you know, why would anyone have——

[Laughter.]

Senator HIRONO. I am not going to say anything bad about you. And why would anyone have any objections to you? And I note that you have the support of Ken Starr, Paul Clement, Ted Olson, and this maybe somewhat akin—you may want to not say anything, but I am very curious as to what is the basis for your strong support from people in such a wide spectrum of positions?

Mr. SRINIVASAN. I do not know, Senator, candidly, but I hope——

[Laughter.]

Senator HIRONO. I think you are being too modest.

Mr. SRINIVASAN. I guess I would say this: I would hope what it suggests is the following: one thing is it suggests good fortune on my part because I have been very, very lucky to get to work alongside many of the individuals you named. I have worked for five Solicitors General, and they are all amazing lawyers, and it has been a real privilege to get to work with them. And I hope what their support bespeaks is an appreciation and a respect for the way I try to carry out my job. And, candidly, I am very proud of that. And I hope that that reflects well on me and on my ability to do my responsibilities in the current job that I have and in any future job I may have.

Senator HIRONO. Well, as I sit here—and I am sorry that I was not here for your opening, but I have had a chance to read up on you, and we have talked. So I certainly wish you the best.

Thank you, Mr. Chairman.

Mr. SRINIVASAN. Thank you.

Senator COONS. Thank you, Senator Hirono.

My understanding is there are no other Members of the Committee likely to come, and so there being no other Members of the Committee who have further questions for the nominee, we will hold the record open for a week in the event that Committee Members wish to submit in writing additional questions.

I want to thank the nominee, your family, and, in particular, Vikram and Maya, for having done particularly well. There will be a quiz afterwards on all the cases that were discussed today.

[Laughter.]

Senator COONS. I will, if I might just in closing, say that I share very strongly the views expressed by some of my colleagues that it was shameful that Caitlin Halligan, the nominee to the DC Circuit, was filibustered and denied a vote on the floor. It is my hope that after today's hearing and after a number of meetings, exchanges, conversations we have had with my colleagues, that we will be able to proceed swiftly to a confirmation vote in your case. I very much look forward to supporting you and very much look forward to benefiting as a citizen from your service on the D.C. Circuit.

So, with that, this nomination hearing is adjourned. Thank you.  
[Whereupon, at 4:04 p.m., the Committee was adjourned.]

**Statement Of Senator Patrick Leahy (D-Vt.)  
Chairman, Senate Judiciary Committee  
On Judicial Nominations  
April 10, 2013**

Today the Judiciary Committee welcomes Sri Srinivasan. I thank Senator Coons for chairing this important hearing.

This hearing was originally planned for January, having been delayed from last year when this nomination was first made by the President. I agreed to an additional delay at the request of the Ranking Member in order to allow time for our staffs to better understand what, if any, role the nominee had in his current position as Principle Deputy Solicitor General of the United States in the events leading up to the City of St. Paul, Minnesota, withdrawing its petition before the Supreme Court in a case that had the potential to unravel 40 years of civil rights in housing law. I trust that having fully explored that issue we will be prepared to provide strong bipartisan support for this nominee. This hearing is to allow any Senator with questions about the nominee's qualifications or past actions to be able to raise them and afford the nominee a fair opportunity to answer them.

In the wake of the Republican filibuster of the nomination of Caitlin Halligan, the D.C. Circuit has just seven active judges and is burdened with four continuing vacancies. This is an important court that hears important cases. They are often complex cases, so raw caseload data does not fairly reflect the work of the judges on this Court. With respect to those caseload numbers, however, the Administrative Office of U.S. Courts indicates that the D.C. Circuit has a caseload per active judge of 188 pending appeals. This is similar to the caseload per active judge on several other courts to which the Senate has already confirmed nominees this year, including the First, Third, and Tenth Circuits. It is also higher than the caseload per active judge when Senate Republicans moved forward to confirm President Bush's nominations to the D.C. Circuit just a few years ago.

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Questions for Mr. Srinivasan  
Senator Ted Cruz

Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

**Senator Chuck Grassley  
Questions for the Record**

**Srikanth Srinivasan  
Nominee, United States Circuit Judge for the D.C. Circuit**

1. At your hearing, I asked you about your communications with Mr. Perez regarding the quid pro quo between the Department of Justice and the City of St. Paul. I asked:

Mr. Perez, Assistant Attorney General for the Civil Rights Division, reached out to you in the December of 2011 and asked – and I am paraphrasing – as a practical matter how a party would go about withdrawing a case from the Supreme Court. Is that right?

You responded, in part:

He did put that inquiry to me. If I am recalling the chain of correspondence to which you are referring, I think that inquiry came in the context of a conversation about whether the regulations that were pending and that might be adopted would have an effect on the pendency and that might be adopted would have an effect on the pendency of the case before the Court. And I believe that is reflected in the correspondence, and it is with that backdrop in mind that we had that exchange.

The correspondence to which you referred is as follows:

On December 9, 2011, at 11:27 PM, you wrote to Mr. Perez:

Also, wanted to follow up very quickly on the mtgs today on one item. Although I do think the calculus changes a bit if the pltfs move to dismiss the petn, I still have doubts about whether we'd weigh in in support of dismissal based on the proposed reg. We can discuss, but just wanted to let you know my intuition. Thanks Tom.

On December 10, 2011, at 7:36 AM, Mr. Perez responded, writing:

Hypothetical question for you: If the petitioners move to dismiss the petition, what is the likelihood of it being granted?

On December 10, 2011, at 9:57 AM, you responded, writing:

I think quite slim if the basis for dismissal would be the proposed reg. I said yesterday that its happened before where a reg was pending during the Ct's consideration of a case and became final before the opinion, but was remiss in not noting that it in fact happened this Term in the Douglas (California Medicaid) case. The Ct asked for supplemental briefing on the impact of the reg. I will speak with the attys principally responsible for the case, but I don't know of a material difference at this point, and my instinct all along as you know is that the reg here would not afford a basis for dismissal. There are also other considerations to take into account, which we can discuss.

On December 10, 2011, at 10:12 AM, Mr. Perez wrote back to you, writing:

I was not clear in my question. Do u have a cell and I will clarify

On December 10, 2011, at 11:14 PM, you responded, writing:

Tom, have been out of town and out of pocket most of the day. Am back tomorrow and will give you a call. My cell is REDACTED. Sri.

On December 10, 2011, at 11:16 PM, Mr. Perez responded, writing:

I will call u tomorrow. I will be in my office most of the day

On December 12, 2011, at 8:58 AM, you responded, writing:

Let me know if we should speak before our 1230 mtg. I'll be at the Ct from about 930-1015 but otherwise in the office.

This correspondence appears to make clear that, initially, when you emailed Mr. Perez, you were referring to the possibility of the Court dismissing a case based on the fact that an Agency Rule had been proposed, but not yet finalized. When Mr. Perez responded by asking a separate and unrelated hypothetical question, you mistakenly understood him to be referring to the proposed rule. Is that an accurate understanding of the correspondence?

2. In 2007 you argued in front of the Supreme Court on behalf of the Respondent in *Zuni Public School District v. U.S. Dept. of Education*.
  - a. Can you please explain what you described in that case, in reference to statutory construction, as a “sliding scale of textual analysis”?
  - b. As a judge, if confirmed, how would you proceed to apply this scale to the Constitution or to federal statutes?
3. In your hearing, I asked if you agreed with the Administration’s position that no reasonable argument could be made in defense of DOMA’s constitutionality. You responded that you were hesitant to give personal views on an issue that you were involved in as an attorney. In this question, I am not asking for your personal views. As an attorney, can you see any reasonable argument that can be made in defense of DOMA’s constitutionality? Please explain.
4. You assisted in the preparation of various briefs in *Padilla v. Rumsfeld* which laid out arguments ultimately adopted by the court as you advocated upholding executive power to detain American citizens on American soil deemed enemy combatants. What is your understanding of current law regarding detention of American citizens on American soil in light of the recent statement by the Attorney General regarding war-time powers?
5. You were a panelist in September 2008 on the panel, “Separate but Equal—The Clash Between the President and Congress Over the Power to Wage War”. You did not have any notes or a transcript to provide to the Committee for this talk. What is your understanding of the relationship between the President and the Congress over waging war?
6. You were a panelist in September 2007 on the panel, “Federal Preemption of State Law, An Increasing Trend?” When is it appropriate for the federal government to preempt state law?
7. In your hearing, Senator Lee asked you about an article that you wrote concerning Indiana’s Voter ID laws. You told him that the article was written on behalf of advocating for a client.
  - a. On what other occasions have you written an article advocating on behalf of a client?
  - b. What was the context behind this article?
  - c. Were you asked to write it by someone or did you decide on your own to write it?
  - d. Your Op-Ed appeared to be more of a public policy argument than a legal argument. What was your purpose in publishing this article? Who was your intended audience?

8. In your hearing, Senator Cruz asked if you ascribed to the concept of a living Constitution. You replied, “that term probably has a lot of freight associated with it”. What did you mean by that statement?
9. What is your judicial philosophy or approach in applying the Constitution to modern statutes and regulations?
10. What role do you think a judge’s opinions of the evolving norms and traditions of our society have in interpreting the written Constitution?
11. You argued in a Texas redistricting case challenging the State’s redistricting plan following the 2020 census. The Supreme Court rejected your argument in a 9-0 decision. Please explain how the arguments you advanced regarding pre-clearance and deference owed by the District Court to the State plan were appropriate and within the mainstream of legal thought.
12. What is your understanding of the current state of the law with regard to the interplay between the establishment clause and free exercise clause of the First Amendment?
13. Do you believe that the death penalty is an acceptable form of punishment?
14. Do you believe there is a right to privacy in the U.S. Constitution?
  - a. Where is it located?
  - b. From what does it derive?
  - c. What is your understanding, in general terms, of the contours of that right?
15. In *Griswold*, Justice Douglas stated that, although the Bill of Rights did not explicitly mention the right to privacy, it could be found in the “penumbras” and “emanations” of the Constitution.
16. Do you agree with Justice Douglas that there are certain rights that are not explicitly stated in our Constitution that can be found by “reading between the lines”?
17. Is it appropriate for a judge to search for “penumbras” and “emanations” in the Constitution?
18. What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?

19. You have spent your legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?
20. It appears from your letters of support to this Committee for Caitlin Halligan, Donald Verrilli, and now Justice Elena Kagan, as well as your pro bono work for Al Gore in the aftermath of the 2000 presidential election, that you have political leanings. There is nothing wrong with that, and such participation does not disqualify any nominee. However, what assurances can you give this Committee that you will not allow political persuasions to play a role in your judicial making philosophy?
21. I don't know if you had any views on the nomination of Miguel Estrada. He had a background very similar to yours. Much of the objection to his nomination was focused on the request that internal Solicitor General memoranda be provided to the Committee. Do you think that was an appropriate request, and would it be appropriate for you to provide similar materials to the Committee in support of your nomination? Please explain.
22. In *Brown v. Entertainment Merchants Association*., Justice Breyer supplemented his opinion with appendices comprising scientific articles on the sociological and psychological harm of playing violent video games.
  - a. When, if ever, do you think it is appropriate for appellate judges to conduct research outside the record of the case?
  - b. When, if ever, do you think it is appropriate for appellate judges to base their opinions psychological and sociological scientific studies?
23. What would be your definition of an "activist judge"?
24. What is the most important attribute of a judge, and do you possess it?
25. Do you think that collegiality is an important element of the work of a Circuit Court? If so, how would you approach your work on the court, if confirmed?
26. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

27. In general, Supreme Court precedents are binding on all lower federal courts. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?
28. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?
29. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?
30. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?
31. What weight should a judge give legislative intent in statutory analysis?
32. Do you believe that a judge's gender, ethnicity, or other demographic factor has any or should have any influence in the outcome of a case? Please explain.
33. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.
34. In your hearing you said, "I think sometimes we see international law in opinions of the Supreme Court as having kind of a confirming quality for a conclusion that has been reached based on analysis of the text and the structure of the Constitution." Will you please provide the Committee an example of this? Is this an approach you would follow, if confirmed? Please explain.
35. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?
36. Under what circumstances, if any, do you believe an appellate court should overturn precedent within the circuit? What factors would you consider in reaching this decision?
37. Please describe with particularity the process by which these questions were answered.
38. Do these answers reflect your true and personal views?

**Questions for the Record**  
Senate Judiciary Committee  
Hearing: "Nominations"  
April 10, 2013  
Senator Amy Klobuchar

**Questions for Srikanth Srinivasan, to be United States Circuit Judge for the District of Columbia Circuit**

1. If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?
2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?
3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?



Questions for Mr. Srinivasan  
Senator Ted Cruz

**Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.**

Response: Were I to be confirmed, my judicial philosophy would be characterized by a commitment to an impartial adherence to the applicable law in addressing the cases that come before me, by which I mean an impartial and faithful application of the governing constitutional provisions, statutes, regulations, judicial precedents, or other pertinent legal instruments to the specific context and facts. I do not have sufficient familiarity with the body of decisions of any particular Justice of the Warren, Burger, or Rehnquist Courts to identify the single Justice whose judicial philosophy might be described as most analogous with mine. When a law student, however, I worked as a research assistant on Professor Gerald Gunther's biography of Judge Learned Hand, *Learned Hand: The Man and the Judge*, and in that capacity became sufficiently familiar with Judge Hand's general approach to the craft of judging to conclude that his general approach seemed a highly admirable one, without regard to his opinions in particular cases or his views on particular issues.

**Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).**

Response: The quoted statement is from a Supreme Court decision that remains binding precedent on all lower courts, including the D.C. Circuit. The Supreme Court made that observation about "judicially created limitations on federal power" in the particular context of the issues before it in *Garcia*, and the Court has invoked state sovereign interests in applying judicially enforceable limitations on federal power in other cases such as *Printz v. United States*, 521 U.S. 898 (1997), and *New York v. United States*, 505 U.S. 144 (1992). I would faithfully apply the pertinent decisions of the Supreme Court addressing issues concerning state sovereign interests if I were to be confirmed and cases presenting those issues were to come before me.

**Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?**

Response: In *United States v. Morrison*, 529 U.S. 598, 610-611, 613 (2000), and *United States v. Lopez*, 514 U.S. 549, 560-561, 566-567 (1995), the Supreme Court emphasized the non-economic nature of the regulated conduct in invalidating an Act of Congress on the ground that it exceeded Congress's power under the Commerce Clause. The Court, however, did not hold that non-economic activity can never fall within the scope of Congress's power under the Commerce Clause. In *Gonzalez v. Raich*, 545 U.S. 1 (2005), Justice Scalia, after reviewing the Supreme Court's Commerce Clause jurisprudence, subsequently stated in a concurring opinion that "Congress may regulate even non-

economic activity if that regulation is a necessary part of a more general regulation of interstate commerce.” *Id.* at 37 (Scalia, J., concurring). Were I to be confirmed, if confronted with any issues concerning the scope of Congress’s authority to regulate non-economic conduct pursuant to its Commerce Clause power, I would carefully review the competing arguments and faithfully apply pertinent precedents of the Supreme Court and D.C. Circuit.

**What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?**

Response: The ability of the President to apply and enforce executive actions, including executive orders, would be subject to the applicable constitutional constraints on the exercise of federal power, including constraints established in the Bill of Rights. Those constraints would be judicially enforceable in the context of a justiciable case or controversy. With regard to whether the President has acted within the scope of constitutional or statutory authority in issuing executive actions including executive orders, Justice Jackson’s concurring opinion in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635-638 (1952), set forth a framework for addressing the President’s actions, and the Supreme Court has subsequently applied that framework, *see, e.g., Medellín v. Texas*, 552 U.S. 491, 524-525 (2008); *Dames & Moore v. Regan*, 453 U.S. 654, 669-670 (1981). The Supreme Court has held, for instance, that the President, absent congressional action, could not take unilateral action to render the provisions of a non-self-executing Treaty binding in domestic courts. *Medellin*, 552 U.S. at 523-529. In any justiciable case or controversy concerning the validity of the President’s actions, including with respect to issuance or enforcement of executive orders, I would faithfully apply any pertinent precedent of the Supreme Court and D.C. Circuit.

**When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?**

Response: The Supreme Court has explained that its “established method of substantive-due-process analysis has two primary features.” *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997). The first is that the “Due Process Clause specially protects those fundamental rights and liberties which are, objectively speaking, deeply rooted in this Nation’s history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.” *Id.* at 720-721 (citations and internal quotation marks omitted). The second is that the Court has “required in substantive-due-process cases a careful description of the asserted fundamental liberty interest.” *Id.* (citations and internal quotation marks omitted). I would faithfully and carefully apply those principles and pertinent precedent of the Supreme Court and D.C. Circuit if I were confirmed and a case before me presented questions concerning whether an asserted right is fundamental for purposes of substantive due process.

**When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?**

Response: I am counsel to a client in a case currently pending in the Supreme Court, *United States v. Windsor*, Sup. Ct. No. 12-307, that raises questions concerning the standards for determining when a classification is subject to heightened judicial scrutiny

under the Equal Protection Clause and the application of those standards. I am therefore not in a position to address those issues outside the context of my ongoing role as counsel representing my client's position and interests in that pending matter. We have stated in that case that the Supreme Court's decisions have "established a set of factors that guide the determination of whether to apply heightened scrutiny to a classification," including "whether the class in question has suffered a history of discrimination," "whether the characteristic prompting the discrimination frequently bears no relation to ability to perform or contribute to society," "whether the discrimination against members of the class is based on obvious, immutable, or distinguishing characteristics that define them as a discrete group," and "whether the class is a minority or politically powerless." U.S. Br., *Windsor*, at 20 (citations and internal quotation marks omitted).

**Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).**

Response: The quoted statement is from a Supreme Court decision that is binding precedent on all lower courts, including the D.C. Circuit. If I were to be confirmed, I would faithfully and carefully apply that precedent, as well as any pertinent additional precedent that may be issued by the Supreme Court or the D.C. Circuit—including any decision in *Fisher v. University of Texas*, Sup. Ct. No. 11-345, currently pending before the Supreme Court—to any case to come before me that may raise questions concerning the consideration of an applicant's race in the context of a public university's admissions decisions.

**Senator Chuck Grassley  
Questions for the Record**

**Srikanth Srinivasan  
Nominee, United States Circuit Judge for the D.C. Circuit**

1. At your hearing, I asked you about your communications with Mr. Perez regarding the quid pro quo between the Department of Justice and the City of St. Paul. I asked:

Mr. Perez, Assistant Attorney General for the Civil Rights Division, reached out to you in the December of 2011 and asked – and I am paraphrasing – as a practical matter how a party would go about withdrawing a case from the Supreme Court. Is that right?

You responded, in part:

He did put that inquiry to me. If I am recalling the chain of correspondence to which you are referring, I think that inquiry came in the context of a conversation about whether the regulations that were pending and that might be adopted would have an effect on the pendency and that might be adopted would have an effect on the pendency of the case before the Court. And I believe that is reflected in the correspondence, and it is with that backdrop in mind that we had that exchange.

The correspondence to which you referred is as follows:

On December 9, 2011, at 11:27 PM, you wrote to Mr. Perez:

Also, wanted to follow up very quickly on the mtgs today on one item. Although I do think the calculus changes a bit if the pltfs move to dismiss the petn, I still have doubts about whether we'd weigh in in support of dismissal based on the proposed reg. We can discuss, but just wanted to let you know my intuition. Thanks Tom.

On December 10, 2011, at 7:36 AM, Mr. Perez responded, writing:

Hypothetical question for you: If the petitioners move to dismiss the petition, what is the likelihood of it being granted?

On December 10, 2011, at 9:57 AM, you responded, writing:

I think quite slim if the basis for dismissal would be the proposed reg. I said yesterday that its happened before where a reg was pending during the Ct's consideration of a case and became final before the opinion, but was remiss in not noting that it in fact happened this Term in the Douglas (California Medicaid) case. The Ct asked for supplemental briefing on the impact of the reg. I will speak with the attys principally responsible for the case, but I don't know of a material difference at this point, and my instinct all along as you know is that the reg here would not afford a basis for dismissal. There are also other considerations to take into account, which we can discuss.

On December 10, 2011, at 10:12 AM, Mr. Perez wrote back to you, writing:

I was not clear in my question. Do u have a cell and I will clarify

On December 10, 2011, at 11:14 PM, you responded, writing:

Tom, have been out of town and out of pocket most of the day. Am back tomorrow and will give you a call. My cell is REDACTED. Sri.

On December 10, 2011, at 11:16 PM, Mr. Perez responded, writing:

I will call u tomorrow. I will be in my office most of the day

On December 12, 2011, at 8:58 AM, you responded, writing:

Let me know if we should speak before our 1230 mtg. I'll be at the Ct from about 930-1015 but otherwise in the office.

This correspondence appears to make clear that, initially, when you emailed Mr. Perez, you were referring to the possibility of the Court dismissing a case based on the fact that an Agency Rule had been proposed, but not yet finalized. When Mr. Perez responded by asking a separate and unrelated hypothetical question, you mistakenly understood him to be referring to the proposed rule. Is that an accurate understanding of the correspondence?

Response: Yes, it is accurate that I understood Mr. Perez to be referring to the proposed rule.

**2. In 2007 you argued in front of the Supreme Court on behalf of the Respondent in *Zuni Public School District v. U.S. Dept. of Education*.**

**a. Can you please explain what you described in that case, in reference to statutory construction, as a “sliding scale of textual analysis”?**

Response: My comment was made in response to the following question during the oral argument: “What if I’m convinced that your opponent’s reading is really only the fair reading of the statute, but I’m also convinced by you that that’s not what Congress intended. What should I do?” As an advocate for my client’s preferred outcome in the case, I referred to a “sliding scale” as an effort to capture the notion that, the more clearly the Court construed the statutory text to contradict our position, the less room there would be to give effect to any perceived, contrary congressional intent. I further stated that, if the Court believed that the statutory text “unambiguously actually compels that reading”—*i.e.*, a reading contrary to our interpretation—“then I don’t know that we would have a position.”

**b. As a judge, if confirmed, how would you proceed to apply this scale to the Constitution or to federal statutes?**

Response: If I were to be confirmed, I would not base my approach to questions I may confront as a judge on positions and arguments I previously advanced on behalf of my clients when in practice. I would faithfully apply pertinent precedents of the Supreme Court and the D.C. Circuit, including precedents addressing the proper approach when construing constitutional and statutory provisions. With respect to statutory construction, the issue raised by the oral argument in the *Zuni Public School District* case, my understanding of those precedents is that, when the statutory text is unambiguous, there is no need to address additional arguments concerning statutory purposes. *See Boyle v. United States*, 556 U.S. 938, 950 (2009).

**3. In your hearing, I asked if you agreed with the Administration’s position that no reasonable argument could be made in defense of DOMA’s constitutionality. You responded that you were hesitant to give personal views on an issue that you were involved in as an attorney. In this question, I am not asking for your personal views. As**

**an attorney, can you see any reasonable argument that can be made in defense of DOMA's constitutionality? Please explain.**

Response: I am counsel to a client in a case currently pending in the Supreme Court, *United States v. Windsor*, Sup. Ct. No. 12-307, that raises the question of the constitutionality of Section 3 of DOMA. I am therefore not in a position to address those issues outside the context of my ongoing role as counsel representing my client's position and interests in that pending matter. The brief for the United States in that case, while arguing that heightened scrutiny should apply, did state that, if the Court applies rational-basis review, the government has previously defended the constitutionality of DOMA Section 3 under rational-basis review and does not challenge the constitutionality of DOMA Section 3 under that highly deferential standard.

- 4. You assisted in the preparation of various briefs in *Padilla v. Rumsfeld* which laid out arguments ultimately adopted by the court as you advocated upholding executive power to detain American citizens on American soil deemed enemy combatants. What is your understanding of current law regarding detention of American citizens on American soil in light of the recent statement by the Attorney General regarding war-time powers?**

Response: Questions concerning the scope of lawful detention authority over American citizens on American soil are currently the subject of pending litigation, and the Department of Justice is counsel for the defendants in that ongoing matter. *Hedges v. Obama*, Nos. 12-3176, 12-3644 (2d Cir.). The Department has explained in that case that a plurality of the Supreme Court, in a case involving an American citizen detained on American soil, determined that "detention of individuals . . . for the duration of the particular conflict in which they were captured, is so fundamental and accepted an incident to war as to be an exercise of the 'necessary and appropriate force' Congress has authorized the President to use" in the Authorization for Use of Military Force (AUMF). *Hamdi v. Rumsfeld*, 542 U.S. 507, 518 (2004) (plurality); *accord id.* at 587 (Thomas, J., dissenting); *see also Boumediene v. Bush*, 553 U.S. 723, 733 (2008) (reaffirming holding of *Hamdi*). The Department has additionally observed in that case that Section 1021 of the National Defense Authorization Act of Fiscal Year 2012 (NDAA) specifies that the NDAA affirms, and does not alter, the detention authority conferred by the AUMF, and further specifies that the NDAA does not "affect existing law or authorities relating to the detention of United States citizens . . . or any other persons who are captured or arrested in the United States."

- 5. You were a panelist in September 2008 on the panel, "Separate but Equal—The Clash Between the President and Congress Over the Power to Wage War". You did not have any notes or a transcript to provide to the Committee for this talk. What is your**

**understanding of the relationship between the President and the Congress over waging war?**

Response: The presentation to which your question refers consisted of a mock Supreme Court argument in which I was assigned to argue one side in a prepared, hypothetical case. My understanding of the authority of the President and Congress in connection with the waging of war is that, as a general matter, the President possesses constitutional authority in his capacity as Commander in Chief of the armed forces, and Congress possesses constitutional authority in its capacity to declare war and to raise and support armies. An understanding of how those respective spheres of authority apply in a particular context would require a careful examination of the specific facts and of the precise nature of the authority being exercised by the President and/or Congress. If I were confirmed and were to confront a justiciable case or controversy raising questions about the respective authority of the President and Congress over waging war, I would carefully review the competing arguments, and would faithfully apply the pertinent precedents of the Supreme Court and the D.C. Circuit to the specific facts and context. Depending on the specific issues raised and the particular factual context in question, those precedents might include, for instance, *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006), *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), *Ex parte Quirin*, 317 U.S. 1 (1942), and *Ex parte Milligan*, 71 U.S. (4 Wall.) 2 (1866).

**6. You were a panelist in September 2007 on the panel, “Federal Preemption of State Law, An Increasing Trend?” When is it appropriate for the federal government to preempt state law?**

Response: The question of whether it is appropriate for the federal government to preempt state law is primarily one to be resolved by Congress, with regard to preemption of state law by a federal statute, or by the Executive Branch, with regard to preemption of state law by federal regulation or administrative action within the scope of statutory authority. In the context of a justiciable case or controversy, the Judicial Branch may be called upon to assess whether Congress or the Executive Branch in fact intended to preempt state law and acted within the scope of their authority in doing so.

**7. In your hearing, Senator Lee asked you about an article that you wrote concerning Indiana’s Voter ID laws. You told him that the article was written on behalf of advocating for a client.**

**a. On what other occasions have you written an article advocating on behalf of a client?**

Response: I do not recall another occasion in which I wrote or co-wrote an article advocating on behalf of a client in the context of a pending case, but I have given



interviews in published articles in connection with advocating on behalf of a client in the context of a pending case, Greg Stohr, '*Business Death Penalty*' for *Hiring Illegal Aliens Unites Obama, Companies*, Bloomberg.com (Dec. 8, 2010); Marcia Coyle, *Home Court Showdown*, National Law Journal (Nov. 9, 2009), I have also given an interview to National Public Radio in connection with advocating on behalf of a client in the context of a pending case, *Supreme Court Hears Case on English in Schools*, National Public Radio (Apr. 20, 2009), and I have also participated in a recorded panel briefing (including for members of the media) in connection with advocating on behalf of a client in the context of a pending case, Briefing on *Chamber of Commerce v. Whiting*, American Constitution Society (Nov. 22, 2010).

**b. What was the context behind this article?**

Response: I was one of the lawyers representing a number of amicus parties who joined together on an amicus brief in support of the petitioners in *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), which addressed the facial constitutionality of Indiana's voter-ID law. I co-authored an article published on the website, *Slate.com*, that set forth the essence of the arguments we had submitted in our amicus brief in a truncated format suitable for the website's readership. In identifying me as a co-author, the article describes me as counsel for amici in the pending case.

**c. Were you asked to write it by someone or did you decide on your own to write it?**

Response: I do not recall the precise circumstances that gave rise to the article, including who initially suggested writing and submitting it, but I do recall discussing the article with our amicus clients and the website publishers in advance of its submission.

**d. Your Op-Ed appeared to be more of a public policy argument than a legal argument. What was your purpose in publishing this article? Who was your intended audience?**

Response: The article sought to capture the essence of the legal arguments we had made on behalf of our clients in the amicus brief we had submitted in the case, but in a truncated and digestible format appropriate to the broad readership of an online magazine. The intended audience included those who might be interested in the case but lacked the time or legal understanding to review our amicus brief.

- 8. In your hearing, Senator Cruz asked if you ascribed to the concept of a living Constitution. You replied, “that term probably has a lot of freight associated with it”. What did you mean by that statement?**

Response: I intended to convey that, while the Constitution functions as a “living” document in the sense that its provisions continue to govern today and that it contains its own mechanism for modification through the amendment process set forth in Article V, the term “living Constitution” seems to have come to be understood to refer to a method of constitutional interpretation according to which the provisions of the Constitution are themselves considered to adapt and change over time other than through the amendment process.

- 9. What is your judicial philosophy or approach in applying the Constitution to modern statutes and regulations?**

Response: I would faithfully apply the pertinent precedents of the Supreme Court and the D.C. Circuit in applying the Constitution to modern statutes and regulations. I would carefully examine the text of the relevant constitutional provisions and the pertinent constitutional structure, and would also carefully review and apply any precedents construing the relevant provisions. In addition, and consistent with applicable precedent, I would assess the discernible, intended meaning of the relevant provisions by reference to pertinent sources at the time of the provisions’ establishment.

- 10. What role do you think a judge’s opinions of the evolving norms and traditions of our society have in interpreting the written Constitution?**

Response: The applicable precedents of the Supreme Court do not support a judge’s generally applying his or her own opinions of the evolving norms and traditions of our society when interpreting the written Constitution, and I would adhere to those precedents were I to be confirmed. The Court has examined “evolving standards of decency” when applying the Eighth Amendment’s prohibition against cruel and unusual punishment, *see Estelle v. Gamble*, 429 U.S. 97, 102 (1976), and I would apply that precedent in the particular contexts in which it is pertinent, but I do not understand the Court to support reliance on “evolving standards of decency” outside that context.

- 11. You argued in a Texas redistricting case challenging the State’s redistricting plan following the 2020 census. The Supreme Court rejected your argument in a 9-0 decision. Please explain how the arguments you advanced regarding pre-clearance and deference owed by the District Court to the State plan were appropriate and within the mainstream of legal thought.**

Response: In *Perry v. Perez*, 132 S. Ct. 934 (2012), the Supreme Court reviewed the district court's process of fashioning interim districting maps to govern an election that was scheduled to take place before the State had obtained preclearance of its redistricting maps as it was required to do by Section 5 of the Voting Rights Act. The Supreme Court held in a per curiam opinion that the district court, in fashioning interim maps, should take "guidance" from the State's unprecleared maps "unless they reflect aspects of the state plan that stand a reasonable probability of failing to gain § 5 preclearance," by which the Court explained it meant that "the § 5 challenge is not insubstantial." *Id.* at 942. The Court then remanded for an application of the standards it had set forth in its opinion, explaining that it was "unclear" whether the district court had "followed the appropriate standards in drawing interim maps." *Id.* at 944. I was counsel for the United States in connection with its amicus submission, and that submission argued in part that, contrary to the State's argument, the Supreme Court should not require the use of the State's unprecleared maps on an interim basis. The Court, consistent with our position in that respect, did not require use of the States unprecleared maps on an interim basis. The United States's brief further argued that the Court should vacate the district court's decision and remand for further analysis with regard to two of the three redistricting maps in issue (for Congress and the State House). Although the Supreme Court did not fully accept the position we advanced, the Court did vacate the district court's decision and remand for further analysis. I believe we had a fully reasonable, good-faith basis for the arguments we advanced on our client's behalf, including precedents of the Supreme Court establishing that a State that is a covered jurisdiction for purposes of Section 5 of the Voting Rights Act may not give legal effect to changes affecting voting unless and until preclearance has been obtained. See *Lopez v. Monterey County*, 519 U.S. 9, 20 (1996); *Clark v. Roemer*, 500 U.S. 646, 652-653 (1991).

**12. What is your understanding of the current state of the law with regard to the interplay between the establishment clause and free exercise clause of the First Amendment?**

Response: My understanding is that, although the Supreme Court has observed that the prohibitions of the Free Exercise Clause and Establishment Clause may be "frequently in tension," there is nonetheless "room for play in the joints between them," such that, for instance, "there are some state actions permitted by the Establishment Clause but not required by the Free Exercise Clause." *Locke v. Davey*, 540 U.S. 712, 718-719 (2004) (citations and internal quotation marks omitted).

**13. Do you believe that the death penalty is an acceptable form of punishment?**

Response: The Supreme Court has established that the death penalty is an acceptable form of punishment under the Constitution, and I would faithfully apply the Supreme Court's decisions concerning the death penalty if I were to be confirmed.

**14. Do you believe there is a right to privacy in the U.S. Constitution?**

Response: The Constitution does not itself refer to a “right to privacy,” but the Supreme Court has understood various constitutional provisions to encompass privacy rights and interests. For instance, the Court has referred to the Fourth Amendment’s protections as conferring a “right of privacy.” *E.g., Johnson v. United States*, 333 U.S. 10, 14 (1948); *see Kentucky v. King*, 131 S. Ct. 1849, 1862 (2011) (referring to “privacy rights that the [Fourth] Amendment protects”). The Court has also found that the First Amendment affords certain protections to “privacy of association and belief.” *Buckley v. Valeo*, 424 U.S. 1, 64 (1976) (citing cases). In addition, the Court has observed that the liberty protected by the Due Process Clause of the Fourteenth Amendment includes a right “to marital privacy.” *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997).

**a. Where is it located?**

Response: Supreme Court precedent recognizes the existence of privacy rights under certain provisions of the Constitution as described above.

**b. From what does it derive?**

Response: Please see above.

**c. What is your understanding, in general terms, of the contours of that right?**

Response: The Supreme Court has understood certain provisions of the Constitution to encompass privacy rights, and the contours of those rights would depend on the particular constitutional provision in issue and the precise facts and circumstances presented by a case in which the privacy-related protections of those provisions were asserted by a party.

**15. In *Griswold*, Justice Douglas stated that, although the Bill of Rights did not explicitly mention the right to privacy, it could be found in the “penumbras” and “emanations” of the Constitution.**

**16. Do you agree with Justice Douglas that there are certain rights that are not explicitly stated in our Constitution that can be found by “reading between the lines”?**

Response: I do not understand the applicable, current Supreme Court precedents to support any process of “reading between the lines” of the Constitution to identify constitutional rights that are not explicitly stated in the Constitution. In *Washington v. Glucksberg*, 521 U.S. 702,

720 (1997), the Court described its opinion in *Griswold*, referenced above in question 15, as recognizing a right of “marital privacy,” and further described that right, not as one that is found by “reading between the lines” of the Constitution, but instead as one that is part of the “liberty” expressly protected by the Fourteenth Amendment’s Due Process Clause. If I were confirmed, I would be bound by, and would faithfully apply, the Supreme Court’s applicable precedents, including the Court’s decision in *Washington v. Glucksberg*.

**17. Is it appropriate for a judge to search for “penumbras” and “emanations” in the Constitution?**

Response: I do not understand the applicable Supreme Court precedents to call for a judge to search for “penumbras” and “emanations” in the Constitution, and I would faithfully adhere to those precedents were I to be confirmed.

**18. What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?**

Response: The Supreme Court’s decisions in *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010), or *District of Columbia v. Heller*, 554 U.S. 570 (2008), did not establish a specific standard of scrutiny for assessing a Second Amendment challenge to a Federal or State gun law, although the Court in *Heller* did determine that rational-basis review would not be an appropriate standard, *id.* at 628 n.27. In *Heller v. District of Columbia*, 670 F.3d 1244, 1257 (D.C. Cir. 2011) (citations and internal quotation marks omitted), the D.C. Circuit determined that “the level of scrutiny applicable under the Second Amendment surely depends on the nature of the conduct being regulated and the degree to which the challenged conduct burdens the right,” such that “a regulation that imposes a substantial burden upon the core right of self-defense protected by the Second Amendment must have a strong justification, whereas a regulation that imposes a less substantial burden should be proportionately easier to justify.” Applying that framework, the court then held that a standard of intermediate scrutiny should apply to gun registration laws and to the prohibitions on certain semi-automatic rifles at issue in the case. *Id.* at 1257, 1261-1262. That decision is binding precedent in the D.C. Circuit, and if I were confirmed, I would faithfully apply it and any other pertinent precedent when identifying the applicable standard of scrutiny in a Second Amendment challenge against a Federal or State gun law.

**19. You have spent your legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?**

Response: I fully understand and appreciate that the role of a lawyer acting as an advocate for his or her clients is to zealously advocate on the client's behalf, whereas the role of a judge, by contrast, is one of impartiality in the sense of an objective adherence to the applicable law. If confirmed, I would abide by a commitment to an impartial adherence to the applicable law in addressing the cases that come before me, by which I mean an impartial and faithful application of the governing constitutional provisions, statutes, regulations, judicial precedents, or other pertinent legal instruments to the specific context and facts. I would be guided by applicable precedents of the Supreme Court and D.C. Circuit in undertaking and implementing that approach. While I fully expect that aspects of the judicial role will prove challenging, particularly at the outset of the transition as one confronts issues for the first time, it is difficult to predict in advance which aspect of the transition will prove to be the most challenging. The process of setting up a well-functioning and efficient chambers, for instance, will present a new challenge for me. I take some comfort, however, in knowing that others have made a similar transition, and I would expect to draw on the counsel and guidance of my colleagues on the court in making the transition.

- 20. It appears from your letters of support to this Committee for Caitlin Halligan, Donald Verrilli, and now Justice Elena Kagan, as well as your pro bono work for Al Gore in the aftermath of the 2000 presidential election, that you have political leanings. There is nothing wrong with that, and such participation does not disqualify any nominee. However, what assurances can you give this Committee that you will not allow political persuasions to play a role in your judicial making philosophy?**

Response: I can assure the Committee that I have a deep respect for the need for strict objectivity and impartiality in the task of judging. Were I to be confirmed, I would abide by a commitment to an impartial adherence to the applicable law in addressing the cases that would come before me, and any personal or political views would play no role in my performance of my responsibilities as a judge. While I have joined the group letters listed above, I also authored and submitted my own, individual letter of support for Raymond M. Kethledge in connection with his nomination to the United States Court of Appeals for the Sixth Circuit. Additionally, while I was part of the legal team that worked for Vice President Gore in the aftermath of the 2000 presidential election, I also was privileged to be hired relatively soon thereafter by Solicitor General Ted Olson, who was the lead lawyer for President Bush in the aftermath of the 2000 presidential election.

- 21. I don't know if you had any views on the nomination of Miguel Estrada. He had a background very similar to yours. Much of the objection to his nomination was focused on the request that internal Solicitor General memoranda be provided to the Committee. Do you think that was an appropriate request, and would it be appropriate**

**for you to provide similar materials to the Committee in support of your nomination?  
Please explain.**

Response: Decisions concerning what requests to make of a nominee are for the Committee to make, and I do not think it would be appropriate for me to comment on the propriety or impropriety of any decision made by the Committee in that regard. My understanding is that the Committee did not request internal Solicitor General memoranda in connection with more recent nominations of individuals who had served in the Solicitor General's Office before being nominated to serve as a judge or a Justice, including Chief Justice Roberts and Justices Kagan and Alito. With respect to whether it would be appropriate for me to provide internal Solicitor General memoranda in connection with my nomination, I agree with the concerns expressed by all then-living Solicitors General in a letter to the Committee dated June 24, 2002. That letter expressed concerns about any request to disclose internal Solicitor General memoranda because the Office's "decisionmaking process required the unbridled, open exchange of ideas—an exchange that simply cannot take place if attorneys have reason to fear that their private recommendations are not private at all, but vulnerable to public disclosure. . . . High-level decisionmaking requires candor, and candor in turn requires confidentiality." Ultimately, any decisions concerning the propriety of providing internal memoranda would be made by the Department of Justice and Executive Branch, presumably taking into account institutional considerations including the concerns about disclosing confidential communications expressed in the June 24, 2002, letter.

**22. In *Brown v. Entertainment Merchants Association.*, Justice Breyer supplemented his opinion with appendices comprising scientific articles on the sociological and psychological harm of playing violent video games.**

**a. When, if ever, do you think it is appropriate for appellate judges to conduct research outside the record of the case?**

Response: Appellate courts rely on the parties to a case to bring to the court's attention—and where appropriate, to include in the record of the case—the relevant sources and authorities on which the court may need to rely in reaching a decision. If confirmed, I would fully expect to rely on the parties to do so. If I confronted any questions concerning the propriety of researching and relying upon materials outside of the appellate record, I would look to precedents of the Supreme Court and the D.C. Circuit to examine the propriety of doing so, if ever, in the particular context in which any such issue might arise.

**b. When, if ever, do you think it is appropriate for appellate judges to base their opinions psychological and sociological scientific studies?**

Response: I would examine pertinent precedent of the Supreme Court and the D.C. Circuit in assessing the propriety of relying on particular types of materials. If a party relied on psychological and sociological scientific studies in presenting its position to an appellate court, an appellate judge would need to carefully examine the relevance of such studies to the specific legal issues raised by the case and in the specific context in which those issues arise before determining whether such studies may appropriately be relied upon. In addition, depending on the circumstances, an appellate judge may also wish to ascertain whether such studies were brought to the attention of the district court, and if so, the manner in which the district court relied (or did not rely) on the studies.

**23. What would be your definition of an “activist judge”?**

Response: I understand an “activist judge” to be a judge who bases his or her decisions on his or her personal policy preferences rather than on an impartial application of the law to the facts.

**24. What is the most important attribute of a judge, and do you possess it?**

Response: I believe an essential attribute of a judge is an ability to maintain objectivity, open-mindedness, and impartiality in addressing the cases that come before him or her, and I believe I possess that ability.

**25. Do you think that collegiality is an important element of the work of a Circuit Court? If so, how would you approach your work on the court, if confirmed?**

Response: Yes, I do believe that collegiality is very important to the effective functioning of a Circuit Court. If confirmed, I would endeavor to treat my colleagues on the court with great civility and respect, regardless of whether they may agree or disagree with my views in a particular case. I would also likewise endeavor to treat the personnel who support the court’s operations, as well as the parties who appear before the court, with great civility and respect.

**26. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: A judge should approach cases with open-mindedness and impartiality, and should treat his or her colleagues, as well as the parties who present competing sides of a



case, with respect and civility. I believe I would meet those standards if I were to be confirmed.

- 27. In general, Supreme Court precedents are binding on all lower federal courts. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes.

- 28. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: I would be guided by precedent of the Supreme Court and the D.C. Circuit in identifying the sources to which I would turn when confronted with a case of first impression. In a case raising an issue of statutory interpretation, for instance, I would, insofar as is consistent with precedent setting forth the proper means of statutory interpretation, carefully examine the pertinent statutory text and structure, look to statutory findings or other relevant and applicable indicia of the statute's purpose as warranted, and consider judicial precedents (or nonbinding decisions from other circuit courts or district courts) that shed light on the provision or that interpret or apply related provisions as warranted.

- 29. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: I would apply any pertinent precedent of the Supreme Court or D.C. Circuit regardless of whether I considered the precedent to be seriously in error.

- 30. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: The Supreme Court has explained that "judging the constitutionality of an Act of Congress is the gravest and most delicate duty that [it] is called upon to perform," *Northwest Austin Mun. Utility Dist. No. One v. Holder*, 557 U.S. 193, 204 (2009) (citation and internal quotation marks omitted), and that a court should "invalidate a congressional enactment only upon a plain showing that Congress has exceeded its constitutional bounds," *United States v. Morrison*, 529 U.S. 598, 607 (2000). In addition, a court should generally avoid invalidating

a statute enacted by Congress if there exists a non-constitutional ground for resolving the case. *See Northwest Austin*, 557 U.S. at 205. When those standards are satisfied in the context of a concrete case or controversy, it is appropriate for a court to declare a statute enacted by Congress unconstitutional.

**31. What weight should a judge give legislative intent in statutory analysis?**

Response: When conducting statutory interpretation, a court should attempt to ascertain the legislature's intent as manifested in the relevant statutory text and structure. If the relevant statutory text is unambiguous, there should be no need to consider other indicia of legislative intent. *See Boyle v. United States*, 556 U.S. 938, 950 (2009).

**32. Do you believe that a judge's gender, ethnicity, or other demographic factor has any or should have any influence in the outcome of a case? Please explain.**

Response: No. A judge should base his or her decision on an impartial application of the law to the facts, without regard to his or her gender, ethnicity, or other demographic factors.

**33. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.**

Response: I would be guided by precedent of the Supreme Court and the D.C. Circuit in undertaking the task of constitutional interpretation, and I understand those precedents to call for an examination of the relevant text and structure when determining the meaning of the Constitution, without regard to foreign law or the views of the "world community." The Supreme Court has, however, at times relied on pertinent English common law in discerning the meaning of certain constitutional provisions. *See United States v. Jones*, 132 S. Ct. 945, 949 (2011). In addition, in *Roper v. Simmons*, 543 U.S. 551 (2005), the Supreme Court referenced certain international law and foreign law sources as "confirmation" of the Court's interpretation of the Eighth Amendment's prohibition against cruel and unusual punishment to bar imposition of the death sentence against juvenile offenders. *Id.* at 575, 578. The Court explained that those sources were "not controlling," but provided "significant confirmation for [the Court's] own conclusions." *Id.* at 578. I would be bound by those Supreme Court precedents as I would be bound by all other Supreme Court precedents.

**34. In your hearing you said, "I think sometimes we see international law in opinions of the Supreme Court as having kind of a confirming quality for a conclusion that has been reached based on analysis of the text and the structure of the Constitution." Will you please provide the Committee an example of this? Is this an approach you would follow, if confirmed? Please explain.**

Response: As explained in the response to question 33, the Supreme Court, in *Roper v. Simmons*, 543 U.S. 551, 575, 578 (2005), referenced certain international law sources as "confirmation" of the Court's interpretation of the Eighth Amendment's prohibition against

cruel and unusual punishment. The Court's decision in *Roper* is binding on lower courts in the particular contexts in which it governs, and I therefore would abide by that precedent in those contexts if I were confirmed.

**35. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: It is essential that judges set aside any personal views when resolving the cases that come before them, and that they instead reach decisions based on a commitment to an impartial application of the law to the facts. I will abide by that standard if I am confirmed, and will treat the parties who appear before me with fairness and respect. I hope that the broad variety of experiences, clients, and issues I have dealt with in my career as a practicing attorney, in addition to the way in which I have comported myself, indicates that I would conduct my responsibilities with impartiality and fairness if I were to be confirmed.

**36. Under what circumstances, if any, do you believe an appellate court should overturn precedent within the circuit? What factors would you consider in reaching this decision?**

Response: A circuit court panel is bound to adhere to a prior circuit decision unless the decision is contrary to an intervening decision of the Supreme Court or of the en banc court of appeals. While a circuit court, sitting en banc, can overturn prior circuit precedent, a circuit court should consider en banc review to overturn circuit precedent only in very narrow circumstances, such as if there is a conflict between prior panel decisions within the circuit or if the prior precedent has proved thoroughly unworkable.

**37. Please describe with particularity the process by which these questions were answered.**

Response: I received the questions on April 17, 2013. I reviewed the questions, conducted pertinent research, and prepared responses, and I then shared my draft responses with the Office of Legal Policy in the Department of Justice. On May 3, 2013, I spoke with representatives of the Office of Legal Policy, after which I revised my responses and then authorized the submission of my responses to the Committee.

**38. Do these answers reflect your true and personal views?**

Response: Yes.

**Questions for the Record**  
Senate Judiciary Committee  
Hearing: "Nominations"  
April 10, 2013  
Senator Amy Klobuchar

**Questions for Srikanth Srinivasan, to be United States Circuit Judge for the District of Columbia Circuit**

- 1. If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?**

Response: Were I to be confirmed, my judicial philosophy would be characterized by a commitment to an impartial adherence to the applicable law in addressing the cases that come before me, by which I mean an impartial and faithful application of the governing constitutional provisions, statutes, regulations, judicial precedents, or other pertinent legal instruments to the specific context and facts. The role of a judge in our constitutional system should be considered under the provisions of Article III of the Constitution, and includes, in particular, the responsibility to adjudicate only concrete cases and controversies that come before him or her.

- 2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

Response: It is essential that a judge conduct himself or herself with impartiality, objectivity, and open-mindedness in considering the cases to come before the court, and that he or she treat the parties that come before the court with fairness and respect. I assure the Committee that, if I were confirmed, I would adhere to those standards. I hope that the broad array of clients I have represented as a practicing attorney, the wide variety of issues I have confronted during the course of those representations, and the way in which I have comported myself, indicate a capacity for open-mindedness and fairness that would serve me well if I were confirmed to be a judge.

- 3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

Response: The doctrine of stare decisis serves vital interests in promoting stability and predictability in the law. Judges must adhere to that doctrine, under which a court is bound to follow applicable precedent except in highly unusual circumstances. A circuit court panel is bound to adhere to a prior circuit decision unless the decision is contrary to an intervening decision of the Supreme Court or of the en banc court of appeals. While a circuit court, sitting en banc, can overturn prior circuit precedent, a circuit court should

consider en banc review to overturn circuit precedent only in very narrow circumstances, such as if there is a conflict between prior panel decisions within the circuit or if the prior precedent has proved thoroughly unworkable. A circuit court is bound to adhere to any Supreme Court decision that has not been overruled by the Supreme Court itself.

April 1, 2013

The Honorable Patrick Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

The Honorable Charles Grassley  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Chairman Leahy and Senator Grassley:

We write collectively in support of Sri Srinivasan to be confirmed as a judge on the United States Court of Appeals for the District of Columbia Circuit. Each of the undersigned has served as Solicitor General or as the Principal Deputy Solicitor General of the United States. Almost all of us worked with Sri during his time in the Solicitor General's Office or served as opposing counsel to Sri or both. We have served both Democratic and Republican Administrations, and as a group, we have argued hundreds of cases before the United States Supreme Court and the federal Courts of Appeals. As detailed below, Sri has a first-rate intellect, an open-minded approach to the law, a strong work ethic, and an unimpeachable character.

Sri is one of the best appellate lawyers in the country. He has argued 24 cases before the United States Supreme Court and other major cases before Court of Appeals around the country. He is a terrific oral advocate, and a gifted writer. While in the Solicitor General's office, Sri quickly grasped the nuances of a wide array of legal issues, drafted finely written briefs, and clearly articulated the position of the United States. He is extremely well prepared to take on the intellectual rigors of serving as a judge on the DC Circuit.

We also witnessed Sri's approach to the law. He has served in the Solicitor General's office in both Republican and Democratic Administrations, and has succeeded in both. He takes a case where the facts and the law lead him. He is also a terrific listener, who values hearing all sides of an argument before formulating a final position.

Sri is an extremely disciplined individual whose work ethic is unsurpassed. While in private practice, Sri did hundreds of hours of pro bono work each year on top of his already demanding schedule. He also managed to find the time to coach his children's basketball teams.

As the undersigned can attest, Sri is a person of great integrity. Lawyers who have appeared on the other side of a case from him can also speak to this quality. He does not take shortcuts or cut corners.

Simply put, Sri would be an excellent court of appeals judge. We urge his timely consideration by this Committee and his swift confirmation in the US Senate. Please do not hesitate to contact us if you have any questions.

Sincerely,

Neal Katyal  
Acting Solicitor General (2010-2011)  
Principal Deputy Solicitor General (2009-2011)

Gregory G. Garre  
Solicitor General (2008-2009)  
Principal Deputy Solicitor General (2005-2008)

Daryl Joseffer  
Principal Deputy Solicitor General (2008-2009)

Paul Clement  
Solicitor General (2004-2008)  
Principal Deputy Solicitor General (2001-2004)

Theodore B. Olson  
Solicitor General (2001-2004)

Barbara D. Underwood  
Acting Solicitor General (2001)  
Principal Deputy Solicitor General (1998-2001)

Seth P. Waxman  
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Walter Dellinger  
Acting Solicitor General (1996-1997)

Drew S. Days  
Solicitor General (1993-1996)

Paul Bender  
Principal Deputy Solicitor General (1993-1996)

Kenneth W. Starr  
Solicitor General (1989-1993)

Donald B. Ayer  
Principal Deputy Solicitor General (1986-1988)

April 4, 2013

The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Charles Grassley  
Ranking Member  
Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

We write to support Srikanth Srinivasan's nomination for a seat on the U.S. Court of Appeals for the District of Columbia Circuit.

All of us worked alongside Sri as law clerks at the U.S. Supreme Court during the 1997-98 Term. During that time, we became well acquainted with Sri's exceptionally strong legal acumen, keen intellect, excellent character, and unflappable good humor. Sri earned the greatest respect from all of his colleagues. Since his clerkship, Sri has served with great distinction in public service and private practice, most notably having served in the Office of the Solicitor General during the last two Administrations.

Sri personifies the values of professional excellence and personal character that the United States expects to see in its judges. We have no doubt that, should he be confirmed, Sri would epitomize the highest ideals of judicial demeanor and collegiality, and we support his nomination to the U.S. Court of Appeals for the D.C. Circuit without reservation.

Sincerely,

Samuel R. Bagenstos  
Professor of Law  
University of Michigan Law School\*  
Ann Arbor, Michigan  
*Law Clerk to Justice Ruth Bader Ginsburg, 1997-98*

J. Scott Ballenger  
Partner  
Latham & Watkins LLP  
Washington, D.C.  
*Law Clerk to Justice Antonin Scalia, 1997-98*

---

\* For all signatories, institutional affiliations are provided for identification purposes only.



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John H. Chestnut Professor of Law, Communication, and Computer & Information Science and  
Founding Director of the Center for Technology, Innovation and Competition  
University of Pennsylvania  
Philadelphia, Pennsylvania  
*Law Clerk to Justice Anthony M. Kennedy, 1997-98*



Emilie R. Ninan, President  
 emilienin@nasaba.com  
 (302) 252-4426

April 5, 2013

The Honorable Patrick J. Leahy, Chair  
 Senate Judiciary Committee  
 224 Dirksen Senate Office Building  
 Washington, D.C. 20510  
 FAX (202) 224-9516

The Honorable Charles Grassley, Ranking Member  
 Senate Judiciary Committee  
 224 Dirksen Senate Office Building  
 Washington, D.C. 20510  
 FAX (202) 224-9102

Dear Chairman Leahy and Ranking Member Grassley,

On behalf of the North American South Asian Bar Association (NASABA), I write to express NASABA's enthusiastic support for the appointment of Srikanth "Sri" Srinivasan to the United States Court of Appeals for the District of Columbia Circuit. NASABA, an umbrella organization with twenty-five regional South Asian Bar Associations throughout the United States and Canada, represents a large and rapidly growing South Asian legal community of over six thousand (6,000) attorneys and law students. The organization focuses on issues relating to the protection of the rights and liberties of the South Asian Community and on the advancement and development of our members in the legal profession.

Mr. Srinivasan is eminently qualified to serve on the D.C. Court of Appeals given his long record of exemplary public service and trial advocacy. He is one of the leading appellate advocates in the nation and will soon argue his twenty-fifth case in front of the U.S. Supreme Court. He has served in both the Bush and Obama administrations in the Solicitor General's office of the U.S. Department of Justice and currently serves as the Principal Deputy Solicitor General. While in the Solicitor General's office, Mr. Srinivasan won both an Award for Excellence from the Department of Defense and the Attorney General's Award for Excellence in Furthering U.S. National Security. He is a former Law Clerk for Justice Sandra Day O'Connor on the U.S. Supreme Court as well as the Hon. J. Harvie Wilkinson III of the U.S. Court of Appeals for the Fourth Circuit.

Mr. Srinivasan's outstanding record of public service also extends to his work with bar associations and in academia. He served on the Board of Directors of the Washington Lawyers Committee for Civil Rights and Urban Affairs and was a member of NASABA's National Advisory Council. He has also served as a Lecturer at Harvard Law School's Appellate and Supreme Court Practice Clinic.

NASABA urges you to confirm Mr. Srinivasan for this seat on the Court of Appeals. His public service under Republican and Democratic administrations has earned him the recognition



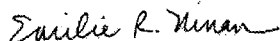
April 5, 2013

Page 2

of the Attorney General, the Department of Defense and his colleagues in the legal community. Of note, Mr. Srinivasan's confirmation would set two separate milestones in promoting the diversity of the federal bench. He is the first South Asian American nominated to a seat on a federal circuit court and would be the first Asian Pacific American judge to serve on the U.S. Court of Appeals for the District of Columbia. No one is more deserving of this distinction than Mr. Srinivasan. His story embodies the American Dream and his confirmation would continue the tradition of selecting only the best and brightest to the bench.

We thank you for your consideration in this matter.

Sincerely,



Emilie R. Ninan, Esq.  
President, North American South Asian Bar Association

cc: Senator Dianne Feinstein, California (f: 202.228.3954)  
Senator Chuck Schumer, New York (f: 202.228.3027)  
Senator Orrin G. Hatch, Utah (f: 202.224.6331)  
Senator Dick Durbin, Illinois (f: 202.228.0400)  
Senator Jeff Sessions, Alabama (f: 202.224.3149)  
Senator Sheldon Whitehouse, Rhode Island (f: 202.228.6362)  
Senator Lindsey Graham, South Carolina (f: 202.224.3808)  
Senator Amy Klobuchar, Minnesota (f: 202.228.2186)  
Senator John Cornyn, Texas (f: 202.228.2856)  
Senator Al Franken, Minnesota (f: 202.224.0044)  
Senator Michael S. Lee, Utah (f: 202.228.1168)  
Senator Christopher A. Coons, Delaware (f: 202.228.3075)  
Senator Ted Cruz, Texas (f: 202.228.0755)  
Senator Richard Blumenthal, Connecticut (f: 202.224.9673)  
Senator Jeff Flake, Arizona (f: 202.228.0515)  
Senator Mazie Hirono, Hawaii (f: 202.224.2126)



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*His-Office*

April 17, 2013

VIA FACSIMILE

**RECEIVED APR 17 2013**

The Honorable Patrick J. Leahy, Chair  
Senate Judiciary Committee  
224 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Charles Grassley, Ranking Member  
Senate Judiciary Committee  
224 Dirksen Senate Office Building  
Washington, DC 20510

**Re: Women's Bar Association's Endorsement of Sri Srinivasan for  
Judge, U.S. Court of Appeals for the District of Columbia Circuit**

Dear Chairman Leahy and Ranking Member Grassley:

On behalf of the Women's Bar Association of the District of Columbia (WBA), I am writing to express the WBA's support for the nomination of Sri Srinivasan to the U.S. Court of Appeals for the District of Columbia Circuit.

Our principal goal in endorsing judicial candidates is to ensure the appointment of qualified judges and, consistent with that goal, to increase the number of judges who support the mission of the WBA. We consider, in our recommendations, the candidate's background, level of experience, connection to the District of Columbia, record of public service, a demonstrated commitment to the equality of all litigants, and an attention to women's needs and concerns.

We evaluate each candidate for endorsement by reviewing his or her resume and other supporting documentation, and discussing the candidate's skills and character with references. We ask each person contacted specific questions regarding the candidate's qualifications, integrity, temperament, experience, and commitment to the concepts of equal opportunity and equal justice under law.

**Women's Bar Association of the District of Columbia**  
3120 Pennsylvania Avenue, NW, Suite 446  
Washington, DC 20006  
Phone: 202-639-8880 Fax: 202-639-8889  
Email: admin@wbadc.org Web: www.wbadc.org

WBA Endorsement of Sri Srinivasan  
 April 17, 2013  
 Page 2

Mr. Srinivasan is without question exceptionally well-qualified for the position to which he has been nominated, and we believe that he would be an outstanding addition to the U.S. Court of Appeals for the District of Columbia Circuit. He began his stellar legal career at Stanford Law School, where he was a Note Editor of the Stanford Law Review and graduated Order of the Coif while enrolled in a dual degree program at Stanford Business School. After graduating, he clerked first for Judge J. Harvie Wilkinson III on the U.S. Court of Appeals for the Fourth Circuit and later for the first female Supreme Court Justice, the honorable Sandra Day O'Connor. In between clerkships, Mr. Srinivasan served as a Bristow Fellow at the Office of the Solicitor General at the U.S. Department of Justice. He has spent his legal career alternating between stints in public and private service, focusing on appellate advocacy throughout. Mr. Srinivasan has served as the Principal Deputy Solicitor General at the U.S. Department of Justice since 2011, and previously served as Assistant to the Solicitor General from 2002-2007. From 1998-2002, and then again from 2007-2011, he was in private practice at the law firm O'Melveny & Myers, first as an associate and partner in and eventually chair of the Supreme Court and Appellate Practice Group. Mr. Srinivasan has argued 24 cases in the U.S. Supreme Court, and drafted briefs or served as counsel of record in over 50 cases. He is the recipient of numerous awards, including: *LawDragon*, 500 *Leading Lawyers in America* (2010-2011); *National Law Journal*, 50 *Most Influential Minority Lawyers in America* (2008); *American Lawyer* Litigation Daily, *Litigator of the Week*; *National Law Journal*, *Appellate Lawyer of the Week*; the Attorney General's Award for Excellence in Furthering U.S. National Security (2003); and the Department of Defense, Award for Excellence (2005).

Beyond Mr. Srinivasan's many professional achievements, he has also demonstrated a commitment to giving back to the community throughout his life. As an undergraduate student at Stanford University he was awarded a Stanford-in-Government Fellowship and a Public Service Fellowship, and after college he spent two years working in local government at the San Mateo County Manager's Office. During his time in private practice, Mr. Srinivasan devoted significant time and resources to pro bono service, and served as a lecturer at the Appellate and Supreme Court Practice Clinic at Harvard Law School and also on the Board of Visitors at Stanford Law School. Locally, Mr. Srinivasan has served on the Board of Directors of the Washington Lawyers Committee for Civil Rights and Urban Affairs and on the Outside Advisory Board of the Georgetown University Law Center's Supreme Court Institute. He has also volunteered to coach his daughter's youth basketball team for many years.

Given his record of achievement and breadth of experience, it is unsurprising that Mr. Srinivasan has received a unanimous rating of Well-Qualified from the ABA's Standing Committee on the Federal Judiciary, the highest rating available. Justice O'Connor herself has commented that Mr. Srinivasan is "a splendid choice for an appellate court position." And recently a bi-partisan group of former high-level officials from the Solicitor General's office—six of them Democrats, six of them Republicans—issued an enthusiastic letter in support of his nomination, noting that "Sri has a first-rate intellect, an open-minded approach to the law, a strong work ethic, and an unimpeachable character. Sri is one of the best appellate lawyers in the

Women's Bar Association of the District of Columbia  
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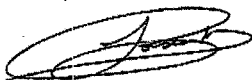
WBA Endorsement of Sri Srinivasan  
April 17, 2013  
Page 3

country." Signatories of the letter included Paul Clement, Ted Olson, Ken Starr, Walter Dellinger, Seth Waxman, and Drew Days.

In addition to Mr. Srinivasan's obvious qualifications, we must note that his confirmation would contribute much needed diversity to the federal bench and to the U.S. Court of Appeals for the District of Columbia Circuit in particular. There has never been a South Asian American federal appellate judge in American history.

For all of these reasons, the WBA is proud to support Mr. Srinivasan's nomination and encourages the Senate to take prompt action to confirm him to the U.S. Court of Appeals for the District of Columbia Circuit. He is one of the nation's leading appellate lawyers, and his reputation for fair-mindedness, superior intellect, and judicious temperament make Mr. Srinivasan an exceptionally well-qualified nominee. If you have any questions regarding this letter of support, please contact me at 202-550-8777 or at [president@wbadc.org](mailto:president@wbadc.org).

Sincerely,



Laura Posesky  
President

cc: Mr. Sri Srinivasan  
Co-Chairs, WBA Judicial and Executive Endorsement Committee:  
Ms. Sasha Battle  
Ms. Rachel Levinson Waldman  
Ms. Elizabeth Marvin  
WBA Board of Directors



1200 18<sup>TH</sup> STREET NW, SUITE 501 • WASHINGTON DC 20036  
 PHONE: 202-296-6889 • FAX: 202-296-6895 • WWW.THEUSCONSTITUTION.ORG

April 11, 2013

The Honorable Patrick Leahy, Chairman  
 Committee on the Judiciary  
 United States Senate  
 Washington, D.C. 20510

The Honorable Charles Grassley, Ranking Member  
 Committee on the Judiciary  
 United States Senate  
 Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

We are writing on behalf of Constitutional Accountability Center, a public interest law firm, think tank and action center dedicated to fulfilling the progressive promise of the Constitution's text and history, to urge that Sri Srinivasan be reported favorably out of Committee and confirmed promptly to the United States Court of Appeals for the District of Columbia Circuit.

Mr. Srinivasan, currently the Principal Deputy Solicitor General of the United States, is extremely well-qualified to serve as a federal appellate judge. He is, by all accounts, a brilliant lawyer and one of this country's foremost appellate advocates. A graduate of Stanford Law School, Mr. Srinivasan went on to clerk for Judge J. Harvie Wilkinson III (4<sup>th</sup> Cir.) and then for Justice Sandra Day O'Connor. He has had a distinguished career in private practice and in public service, and has argued an impressive 24 cases before the Supreme Court.

Mr. Srinivasan's nomination has garnered broad support, including from 12 former Solicitors General and Principal Deputy Solicitors General who have served in Democratic and Republican Administrations. These former high ranking officials, including Walter Dellinger, Drew Days, Ted Olson, and Ken Starr, have described Mr. Srinivasan as having "a first-rate intellect, an open-minded approach to the law, a strong work ethic, and an unimpeachable character," and have urged his "swift confirmation."<sup>1</sup> Justice O'Connor herself has called the nomination of Mr. Srinivasan "a wonderful choice."<sup>2</sup> At his hearing before the Committee on April 10, Mr. Srinivasan ably demonstrated why prominent lawyers and officials from across the ideological spectrum have advocated his confirmation. He rightly celebrated the "genius" of the Constitution and its "enduring, fixed quality," and stressed the

<sup>1</sup> Letter of Neal Katyal, et al., to The Hon. Patrick Leahy and The Hon. Charles Grassley (April 1, 2013), available at: <http://www.judgingtheenvironment.org/library/letters/Srinivasan-former-SGs-letter-4-1-2013.pdf>  
<sup>2</sup> Jeffrey Toobin, "O'Connor and Her Clerk," *The New Yorker* (June 11, 2012), available at: <http://www.newyorker.com/online/blogs/newsdesk/2012/06/oconnor-srinivasan-dc-court-of-appeals.html>


Page 2

importance of "fidelity to the rule of law." It was not surprising that several Senators rhetorically questioned how anyone could oppose Mr. Srinivasan's nomination.

As you know, four of the eleven authorized judgeships on the D.C. Circuit -- nearly 40% -- are currently vacant, making Mr. Srinivasan's prompt confirmation not only well-justified but also a matter of some urgency and national importance. The Senate should not allow any court, let alone one as critical to the nation's interests as the D.C. Circuit, to remain so understaffed; our judicial system, and the American people, deserve better.

Mr. Srinivasan clearly has the qualifications, experience, intellect and temperament to serve with great distinction on the D.C. Circuit. We urge every Senator to support his confirmation.

Respectfully,



Douglas T. Kendall  
President



Judith E. Schaeffer  
Vice President

cc: All Members, Senate Judiciary Committee



**PETER M. REYES, JR.**  
**NATIONAL PRESIDENT**

April 8, 2013

Senator Patrick Leahy  
Chairman, Senate Committee on the Judiciary  
437 Russell Senate Office Bldg.  
United States Senate  
Washington, DC 20510

Senator Chuck Grassley  
Ranking Member, Senate Committee on the Judiciary  
135 Hart Senate Office Bldg.  
United States Senate  
Washington, DC 20510


Dear Chairman Leahy and Ranking Member Grassley,

On behalf of the Hispanic National Bar Association (HNBA), an organization which represents the interests of the more than 100,000 Hispanic attorneys, judges, law professors, legal assistants and law students in the United States and its Territories, we write to reiterate our support for Sri Srinivasan for the United States Court of Appeals for the District of Columbia Circuit Court.

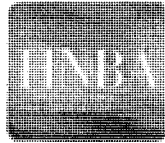
The HNBA has its own Judicial Endorsements Committee which employs a robust due diligence process by which we make recommendations for the federal bench. Mr. Srinivasan received HNBA's endorsement as a result of his career experience and accomplishments, including arguing 24 cases before the Supreme Court, positive reputation in the legal community, and even temperament. Enclosed is HNBA's letter sent last Congress officially endorsing Mr. Srinivasan. In addition to HNBA's support, Mr. Srinivasan has received widespread bipartisan support from leading attorneys.

It has now been nearly ten months since Mr. Srinivasan was first nominated. We respectfully request that you give timely consideration to Sri Srinivasan's nomination and move him through the Senate Judiciary Committee process expeditiously. Thank you both for your dedicated service and attention to the federal bench.

Sincerely,

A handwritten signature in black ink, appearing to read "P. M. Reyes, Jr.", with a stylized flourish at the end.

Peter M. Reyes, Jr.  
HNBA National President



**PETER M. REYES, JR.  
NATIONAL PRESIDENT**

September 27, 2012

**Via Electronic Mail**

Hon. Patrick J. Leahy  
United States Senate  
437 Russell Senate Office Building  
Washington, D.C. 20510

Hon. Chuck Grassley  
United States Senate  
135 Hart Senate Office Building  
Washington, D.C. 20510

**Re: Hispanic National Bar Association Endorsement of Sri Srinivasan for the  
United States Court of Appeals for the District of Columbia Circuit**

Dear Senators Leahy and Grassley:

The Hispanic National Bar Association ("HNBA") is pleased to support Srikanth (Sri) Srinivasan's nomination for a Judge vacancy in the United States Court of Appeals for the District of Columbia Circuit. We believe, based on our research and deliberations, including an interview with Mr. Srinivasan's references, that Mr. Srinivasan's work as the Principal Deputy Solicitor General in the Office of the Solicitor General, among his other appellate work, renders him a significant contributor to the United States Court of Appeals for the District of Columbia Circuit.

The HNBA undertakes a careful review of individuals who seek its endorsement. We ensure that candidates for endorsement meet the letter and the spirit of our endorsement policy, which includes such criteria as demonstrated professional qualifications and personal traits.

Mr. Srinivasan's dedication to public service is clearly reflected in his legal career at the Office of the Solicitor General of the United States Department of Justice, which includes litigation experience, especially in appellate practice. Mr. Srinivasan represents the United States in litigation before the U.S. Supreme Court. For his work, he received the Attorney General's Award for Excellence in Furthering U.S. National Security in 2003 and the Office of the Secretary of Defense Award for Excellence in 2005. In addition, Mr. Srinivasan has extensive experience in private practice and excelled as a partner at the law firm of O'Melveny & Myers LLP. During his time there, Mr. Srinivasan helped to start the firm's appellate practice and in 2011 was named Chair of

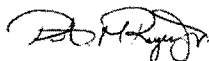
Hon. Patrick Leahy  
 Hon. Chuck Grassley  
 September 17, 2012  
 Page 2 of 2

the Appellate Practice Group. The appellate experience that Mr. Srinivasan gained from his time as a practitioner in the public and private sectors provides him with highly desirable substantive experience that will serve a federal judge well.

Other significant factors encourage our support as well. Mr. Srinivasan has devoted substantial hours to pro bono work during his time in private practice. He devoted over 400 hours a year as a Partner at O'Melveny & Myers, most of which were appellate representations, including in the U.S. Supreme Court. Additionally, Mr. Srinivasan has been involved in a number of professional activities. He was a member of the North American South Asian Bar Association, National Advisory Council, National Asian Pacific American Bar Association, and the American Bar Association Standing Committee on the Federal Judiciary, Practitioners' Reading Group, which reviewed the nomination of Justice Sotomayor (2009). Mr. Srinivasan was also a member of the Outside Advisory Board of the Supreme Court Institute at Georgetown University Law Center.

In sum, the HNBA is pleased and proud to recommend Srikanth Srinivasan's nomination for a Judge position in the United States Court of Appeals for the District of Columbia Circuit and urges his swift confirmation. If we can be of further assistance in the nomination process, please let us know. You may contact us through our national office at (202) 223-4777 or reach me directly at (952) 742-5395 or Peter\_Reyes@cargill.com. Thank you for your consideration.

Sincerely,



Peter M. Reyes, Jr.  
 HNBA National President

cc: Mr. Miguel Pozo, HNBA President-Elect  
 Mr. Robert Raben, HNBA Committee on Judicial Endorsements  
 Mr. Juan Sempertegui, HNBA Region V President

**TESTIMONY BEFORE THE COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE**

**FOR THE HEARING ON THE NOMINATION OF**

**SRIKANTH SRINIVASAN,  
TO BE UNITED STATES CIRCUIT JUDGE FOR THE  
UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT**

**APRIL 10, 2013**

**BY THE  
NATIONAL ASIAN PACIFIC AMERICAN BAR ASSOCIATION**

The National Asian Pacific American Bar Association (NAPABA) submits this testimony to extend its strong support for Srikanth “Sri” Srinivasan, nominee to be United States Circuit Judge for the United States Court of Appeals for the District of Columbia Circuit. Mr. Srinivasan has the experience, intellectual capacity, integrity, and judicial temperament to serve as an excellent circuit court judge. Moreover, Mr. Srinivasan has the strong backing of the Asian Pacific American community nationally.

NAPABA is the national bar association representing the interests of Asian Pacific American attorneys, judges, law professors, and law students. NAPABA represents the interests of over 40,000 attorneys nationally and 63 local Asian Pacific American bar associations. Its members include solo practitioners, large law firm lawyers, corporate counsel, legal service and nonprofit attorneys, judges, and lawyers serving at all levels of government. Through its national network of affiliates and committees, NAPABA provides a strong voice for increased diversity of federal and state judiciaries, advocates for equal opportunity in the workplace, seeks to eliminate anti-Asian crime and anti-immigrant sentiment, and promotes professional development of people of color in the legal profession.

Mr. Srinivasan’s nomination is especially important to NAPABA. Out of the approximately 175 active federal appellate court judges, there are currently only two who are Asian Pacific American. If the number of Asian Pacific American federal appellate court judges approximated the percentage of Asian Pacific American residents nationwide, then there would be 11-12 Asian Pacific American federal appellate court judges.

If confirmed, Mr. Srinivasan would also become the first Indian American to serve as a federal appellate court judge in the history of this country, which is significant because over 3.1 million Indian Americans live in the United States. Mr. Srinivasan also would be the first Asian Pacific American to serve on the D.C. Circuit, which – as this Committee knows – is considered by many to be the second-most important court in the country.



Mr. Srinivasan has received extremely high praise from all segments of the legal community. Supreme Court Justice Sandra Day O'Connor has stated that "he's a splendid choice for an appellate court position." Judge J. Harvie Wilkinson III, a Senior Judge on the U.S. Court of Appeals for the Fourth Circuit appointed by President Ronald W. Reagan, said simply that "I think the world of him." He further stated that "he's likely to be a really, really good judge. . . . [H]e's a good listener and a totally considerate person who has spent his life trying to bridge differences. Everyone is going to get a fair shake from Sri, and people of all persuasions will respect his approach to a case." Deanell Tacha, a former Judge on the U.S. Court of Appeals for the Tenth Circuit and now Dean of Pepperdine University School of Law stated that "[f]rom his earliest days when I first knew him in Lawrence [Kansas] to the highest reaches of U.S. Supreme Court practice, Sri is known for his extraordinary intellect, exemplary integrity and dedication to the highest ideals of the legal profession. . . . Sri brings to this distinguished court the full measure of his great talent, commitment to the rule of law, and understanding of how the law impacts the people of this great nation."

Practitioners likewise have extensive praise for him. Paul Clement, Solicitor General during the George H.W. Bush Administration and Mr. Srinivasan's frequent opposing counsel in Supreme Court cases, stated that Mr. Srinivasan "is a tremendous lawyer and he will be a tremendous judge." Neal Katyal, Acting Solicitor General during the Barack H. Obama Administration, stated that "Sri is one of the very smartest, most talented, and decent advocates in the country." Walter Dellinger, Acting Solicitor General for President William J. Clinton, stated that Mr. Srinivasan is "one of the two or three best advocates before the Supreme Court [a]nd he is really an especially gifted lawyer." Indeed, all of the former U.S. Solicitors General and many of the Principal Deputy Solicitors General from the Reagan, George H.W. Bush, Clinton, and George W. Bush Administrations, have signed a letter stating that "[s]imply put, Sri would be an excellent court of appeals judge." This group includes conservatives such as Kenneth Starr, Ted Olson, Paul Clement, and Greg Garre. Likewise, a group of 28 U.S. Supreme Court clerks who clerked alongside Mr. Srinivasan during the 1997-98 term signed a letter attesting to his "exceptionally strong legal acumen, keen intellect, excellent character, and unflappable good humor."

Mr. Srinivasan has had an extremely distinguished career at the highest levels of the legal profession. He has argued 24 cases before the U.S. Supreme Court, a number surpassed by very few practitioners today. Those cases have spanned the full range of issues that he may be expected to face if confirmed as an appellate court judge: issues related to complex litigation, administrative law, criminal law, and constitutional law. He has amassed this record of cases through different roles: representing the United States as an Assistant to the Solicitor General and currently as the Principal Deputy Solicitor General; representing private clients as the Chair of the Supreme Court and Appellate Practice at the law firm O'Melveny & Myers; and representing nonprofit organizations and individuals through pro bono cases.

Mr. Srinivasan has demonstrated his excellence at each step of his career. He received his B.A., M.B.A., and J.D. all from Stanford University. After graduation, he served as a law clerk

Testimony of the National Asian Pacific American Bar Association Regarding Srikanth Srinivasan  
Page 3  
April 10, 2013

for Judge Wilkinson on the Fourth Circuit and Justice O'Connor on the Supreme Court. Between the two clerkships, he was a Bristol Fellow serving in the U.S. Solicitor General's office. Since clerking, he has alternated between private practice at O'Melveny & Myers and government service at the Solicitor General's Office.

Notwithstanding his high profile practice, Mr. Srinivasan has continued to find ways to serve the community. He has served on the Board of Visitors for Stanford Law School, the National Advisory Council for the North American South Asian Bar Association, and the Board of Directors for the Washington Lawyers Committee for Civil Rights and Urban Affairs, and has been a Lecturer at Harvard Law School, teaching courses on Supreme Court and Appellate Practice.

Given this record of achievement, it is unsurprising that Mr. Srinivasan has garnered numerous awards for his accomplishments. These awards and recognitions include: 50 Most Influential Minority Lawyers in America, *National Law Journal* (2008); 500 Leading Lawyers in America, *LawDragon* (2010-11); Cornerstone Award, North American South Asian Bar Association (2009); Award for Excellence, Office of the U.S. Secretary of Defense (2005); U.S. Attorney General's Award for Excellence in Furthering U.S. National Security (2003). It is also unsurprising that the American Bar Association unanimously ranked him "Well Qualified."

Mr. Srinivasan's personal story demonstrates that the United States is the land of opportunity. Sri is Indian by birth, Kansan at heart, and all American in story. He was born in Chandigarh, India, and immigrated to the United States with his parents and two younger sisters as a child. Sri grew up in Lawrence, Kansas, where his father was a professor of mathematics at the University of Kansas, and his mother taught at the Kansas City Art Institute. Throughout his upbringing, Sri went to public schools in Kansas. In high school, Sri was very active in sports and music, including playing on the high school varsity basketball team. As a result of his interest in sports and residence in Lawrence, Sri became and still is a die-hard University of Kansas basketball fan. He lives in Northern Virginia and has 11 year old twins (a daughter and a son), both of whom attend a Spanish immersion public school. He has served as a basketball coach for youth teams for many years.

Sri Srinivasan would make an immediate contribution as a federal circuit court judge. His qualifications, integrity, intellect, and commitment to the justice system are unquestionable. He also brings with him an all-American life story that is inspiring. Particularly given the lack of any South Asian or Indian American federal appellate court judge nationwide, the swift confirmation of Mr. Srinivasan is important to NAPABA and the Asian Pacific American community. Accordingly, the National Asian Pacific American Bar Association extends its strong support and urges for the speedy confirmation of Srikanth Srinivasan to the United States Court of Appeals for the District of Columbia Circuit. Thank you for considering this testimony today.



**NOMINATIONS OF RAYMOND T. CHEN, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE FEDERAL CIRCUIT; AND JENNIFER A. DORSEY, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF NEVADA**

**WEDNESDAY, APRIL 24, 2013**

U.S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Committee met, pursuant to notice, at 2:34 p.m., in Room SD-226, Dirksen Senate Office Building, Hon. Mazie Hirono, presiding.

Present: Senators Hirono, Grassley and Lee.

**OPENING STATEMENT OF HON. MAZIE HIRONO, A U.S. SENATOR FROM THE STATE OF HAWAII**

Senator HIRONO. I am pleased to call this nomination hearing of the Senate Committee on the Judiciary to order, and I would like to welcome each of the nominees, their families, and friends to the U.S. Senate and congratulate them on their nominations.

I would like to also welcome, of course, Majority Leader Reid, who is here to introduce Jennifer Dorsey. I know that, Mr. Reid, you have pressing business, so of course feel free to leave after you have given your introductions.

**PRESENTATION OF JENNIFER A. DORSEY, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEVADA, BY HON. HARRY REID, A U.S. SENATOR FROM THE STATE OF NEVADA**

Senator REID. Madam Chair, thank you very much. You are going to really care a great deal about Jennifer Dorsey because she is a real lawyer like you are.

Senator HIRONO. Thank you for that.

Senator REID. She is a distinguished public servant. She is someone who I am very proud to have sent the name to the President. She is a Las Vegas native. Her father was stationed at Nellis Air Force Base after he retired and after having returned from Vietnam, actually. He chose to start his family in Nevada, and he did that.

She graduated from one of our very large high schools, Chaparral High School, a school of about 3,500 students. She graduated from the University of Nevada Las Vegas cum laude. She was the first member of her family to graduate from college.

She served as an intern back here for my former colleague, Governor Senator Richard Bryan. She attended Pepperdine University School of Law.

Madam Chairman, have you ever seen that facility? It is so beautiful. It is right on the ocean. It is just very, very beautiful.

She was a member of their law review, *Pepperdine School Law Review*. After graduation, she returned to Las Vegas, entered pri-

vate practice. She excelled, first associate and now partner at one of the finest law firms in the country, Kemp, Jones and Coulthard. They do remarkably good work. She is the first and only female partner in that law firm.

She specializes in civil litigation, and she has a niche in complex commercial disputes. She does appeals for that large law firm, and she also participates in their class action work.

She has really a sterling reputation among her peers in Nevada. She has been recognized by judges in the State and federal level for her legal writing, her advocacy, her ethics, and just simply being a professional.

She serves on the Nevada Supreme Court's Committee on Professionalism. She is committed to her community in many different ways. She was honored as recipient of the Legal Aid of Southern Nevada's Pro Bono Project. It is named after one of our fine lawyers, Vince Consul, which is the highest award they can give, and it was given for her countless hours of work. It was given to her in 2011 for her countless hours of pro bono service.

She currently serves on UNLV Foundation Advisory Board, Pepperdine Law School Board of Visitors. I am extremely comfortable with this fine woman. It will be a great addition to the bench in Nevada.

And just in passing I would mention, Madam Chair, I have had that good fortune of being able to change the makeup of the Nevada Federal Judiciary. We now have—let us see. I put four—a woefully small federal bench—I put four women on there with the help of President Clinton and President Obama.

Senator HIRONO. Good job.

[Laughter.]

Senator HIRONO. I would like to, of course, thank the leader for coming here and offering his testimony. I would like to now offer an introduction of Raymond Chen.

Mr. Chen was named Deputy General Counsel for Intellectual Property Law and Solicitor at the U.S. Patent and Trademark Office, USPTO, in December 2008. In this role, he defends the Under Secretary of Commerce and Director of the USPTO and the Agency in court-related procedures relating to intellectual property issues.

He previously served as an Associate Solicitor where he spent 10 years defending the USPTO's decisions in federal court, briefing and arguing numerous cases before the U.S. Court of Appeals for the Federal Circuit. Mr. Chen has also provided legal advice to the USPTO on new regulations and examination guidelines.

Before joining USPTO, Mr. Chen served for two years as a Technical Assistant at the U.S. Court of Appeals of the Federal Circuit. Prior to that, he was an associate at Knobbe Martens Olson and Bear in Newport Beach, California, where his practice focused on patent, prosecution, and litigation.

Before entering law school, Mr. Chen was a scientist for Hecker and Harriman in Los Angeles, California, specializing in patent prosecutions for electronics and computer-related technologies. He received his J.D. from the New York University School of Law and his B.S. in electrical engineering from the University of California at Los Angeles.

I had the opportunity to meet with Mr. Chen recently where he shared with me his path to the law after beginning a career as an engineer. He talked about his parents emigrating from Taiwan to the United States, and as he is their only child, I can imagine how proud they must be today.

Mr. Chen also talked about his family, his wife, whom he met in law school, and their two children. I was thoroughly impressed with Mr. Chen, and I am sure that his qualifications, along with his skill and specialized knowledge, will make him an ideal nominee for the federal circuit.

I would note that Mr. Chen's nomination is also an important milestone for the Asia and Pacific American community, or the APA community. If confirmed, Mr. Chen will be the first APA on the federal circuit in over 25 years. He will be the first Taiwanese American on a federal appellate court, and depending, he could be only the third—depending on his approval—be only the third APA Article III appellate judge in the country, joining Denny Chin on the Second Circuit and Jacqueline Nguyen on the Ninth Circuit.

At this point, I would like to submit for the record four letters of support for Mr. Chen from the Federal Circuit Bar Association, Former Solicitors of the USPTO, the General Counsel of the U.S. Department of Commerce, the managing partner of Knobbe Martens Olson and Bear, and from the former Director of the USPTO.

[The letters appear as submissions for the record.]

Senator HIRONO. In addition, I would also like to submit written testimony from the National Asia Pacific American Bar Association in support of Mr. Chen's nomination. Since I am chairing this, there is no objection to the submittals.

[Laughter.]

[The written testimony appears as a submission for the record.]

Senator HIRONO. At this point I would ask the nominees to stand and raise your right hands as I administer the oath. Do you solemnly swear that the testimony you are about to give to the Committee will be the truth, the whole truth, nothing but the truth, so help you God?

Ms. DORSEY. I do.

Mr. CHEN. I do.

Senator HIRONO. Thank you. Let the record show that the nominees have answered in the affirmative. Please be seated.

I would now invite each of the nominees to recognize your loved ones and supporters. We can start with Ms. Dorsey.

**STATEMENT OF JENNIFER A. DORSEY, NOMINEE TO BE  
DISTRICT JUDGE FOR THE DISTRICT OF NEVADA**

Ms. DORSEY. Thank you so much, Madam Chair. First of all, I want to say a few words of recognition. I would like to thank you for chairing this hearing today. I would also like to thank Senators Leahy and Grassley for scheduling this hearing and placing me on the witness list.

I certainly want to thank Majority Leader Reid for his introduction and his kind words, which were very much appreciated. I also want to thank Senator Heller for allowing me the opportunity to move forward in this process today. And last, I want to thank

President Obama for his nomination and for giving me the honor of participating in this process.

Finally, I want to introduce the people that are here with me today and who are watching from home in Las Vegas. First and foremost, I have with me here today my husband, Daron Dorsey, who has been a wonderful partner through this entire process.

I am also extremely fortunate to have with me today my support team since the fourth grade, my best friends, Kathleen Lenihan, who is here from Boston today, and Maureen Rust—

Senator HIRONO. Please wave your hand so we know who you are. Welcome.

Ms. DORSEY. That is Kathleen. And then Maureen Rust who has made it out here on a redeye from California last night. I really appreciate them being here.

Also watching from home are my daughter, Kate, who is a high school freshman and was unable to take the time away from school to be here today. My parents, Ned and Sherry Cole, and also everyone back at my law firm, Kemp, Jones and Coulthard in Las Vegas who are watching from the large conference room today.

So it is my distinct pleasure, Madam Chair, to be with you here today. Thank you so much.

Senator HIRONO. Welcome to you and your family.

Ms. DORSEY. Thank you.

[The biographical information of Ms. Dorsey follows:]

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).

Jennifer Anna Dorsey  
(f/k/a Jennifer Cole Dorsey, Jennifer Cole Popick, Jennifer Anna Popick, Jennifer Anna Cole)

2. **Position:** State the position for which you have been nominated.

United States District Judge for the District of Nevada

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Kemp, Jones & Coulthard, LLP  
3800 Howard Hughes Parkway, 17th Floor  
Las Vegas, Nevada 89169

Residence: Henderson, Nevada

4. **Birthplace:** State year and place of birth.

1971; Las Vegas, Nevada

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1994 – 1997, Pepperdine University School of Law; J.D. (*cum laude*), 1997  
1989 – 1994, University of Nevada at Las Vegas; B.A. (*cum laude*), 1994

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.



1997 – Present  
 Kemp, Jones & Coulthard, LLP  
 3800 Howard Hughes Parkway, 17th Floor  
 Las Vegas, Nevada 89169  
 Equity Partner (2004 – Present)  
 Associate Attorney (1997 – 2004)

Spring 1997  
 Law firm (I do not recall the name)  
 Woodland Hills, California  
 Law clerk

1996 – 1997  
 Totaro & Shanahan, Attorneys at Law  
 518 East Second Street  
 Santa Ana, California 92701  
 Law Clerk

Fall 1996  
 Ninth Circuit Court of Appeals  
 213 North Spring Street  
 Los Angeles, California 90012  
 Judicial Extern for Judge Stephen Reinhardt

1995 – 1996  
 Pepperdine University School of Law  
 24255 Pacific Coast Highway  
 Malibu, California 90263  
 Research Assistant for Constitutional Law Professor Bernard James

Summer 1995  
 Ventura County District Attorney  
 800 South Victoria Avenue  
 Ventura, California 93009  
 Summer Law Clerk

Summer 1994  
 Nevada State Bank  
 1000 North Green Valley Parkway  
 Henderson, Nevada 89074  
 Teller

Other Affiliations (uncompensated):

2004 – 2006  
 Easter Seals of Southern Nevada

6200 West Oakey Boulevard  
Las Vegas, Nevada 89146  
Member, Board of Directors (2004 – 2006)  
Secretary (2005 – 2006)

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I was not required to register for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

AV Rated by Martindale-Hubbell in Litigation, Commercial Law, and Appellate Practice

*Nevada Business Magazine's* Legal Elite (2012)

Benchmark Litigation's Top 250 Women in Litigation (2012)

Co-recipient of the Legal Aid of Southern Nevada's Pro Bono Project's Vince Consul Memorial Pro Bono Award (2011)

Legal Aid Center of Southern Nevada Pro Bono Project 50 Hours Club (2011)

Benchmark Litigation's Future Stars (2011)

Legal Aid Center of Southern Nevada's Pro Bono Project 100 Hours Club (2010)

Legal Aid Center of Southern Nevada's Pro Bono Project 50 Hours Club (2009)

*Super Lawyers* Mountain States Rising Star (2009)

American Jurisprudence Award for Constitutional Law (1997)

American Jurisprudence Award for Wills & Trusts (1997)

Best Petitioner's Brief Award and Second Place Team, Vincent S. Dalsimer Moot Court Tournament (1997)

Best Petitioner's Brief Award and Quarterfinalist, Vincent S. Dalsimer Moot Court Tournament (1996)

Pepperdine's Di Loretto-McConnell Scholarship Recipient (1996 – 1997)

Staff Member, Pepperdine Law Review (1995 – 1997)

UNLV Orientation Leader (1993)

UNLV Merit Scholarship (1989)

UNLV Dean's Honor List (1989 – 1994)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association (2011 – Present)

Litigation Section (2011 – Present)

Clark County Bar Association (1997 – Present)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Nevada, 1997

There have been no lapses in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States, 2004

United States Court of Appeals for the Ninth Circuit, 2006

United States District Court for the District of Nevada, 1997

Nevada Supreme Court, 1997

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held.

Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Easter Seals of Southern Nevada (2004 – 2006)  
Board of Directors (2004 – 2006)  
Secretary (2005 – 2006)

Nevada Justice Association (1998 – Present)

Nevada Supreme Court's Committee on Professionalism (2009 – Present)

Pepperdine School of Law's Board of Visitors (2011 – Present)

Scribes – The American Society of Legal Writers (2009 – Present) (Lifetime Member)

Spanish Trail Country Club (2006 – 2008)

University of Nevada at Las Vegas Foundation Advisory Board (2012 – Present)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed in response to 11(a) above currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin either through formal membership requirements or the practical implementation of membership policies.

## 12. **Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

With J. Randall Jones, *Decisions Interpreting Rule 23 of the Nevada Rules of Civil Procedure*, SURVEY OF STATE CLASS ACTION LAW 366 (2011). I have co-authored this chapter every year since 1999. Copy supplied.

*NRS 40.689(1)(a): A Courthouse Line Pass for Chapter 40 Cases*, COMMUNIQUE, Sept. 1999, at 18. Copy supplied.

*A Time to Die?: Deciding the Legality of Physician-Assisted Suicide*, 24 PEPP. L. REV. 1327 (1997). Copy supplied.

*The Sufficiency of an Uncorroborated, Out-of-Court Identification to Support a Conviction Should be Measured by the Substantial Evidence Test: People v. Cuevas*, 24 PEPP. L. REV. 749 (1997). Copy supplied.

*Accretion of Deposits along Shorelines is Characterized as Artificial and Thus Belongs to the State Only when it is Directly Caused by Human Activities Occurring in the Immediate Vicinity of the Accreted Land: State ex rel. State Lands Commission v. Superior Court (Loveface)*, 24 PEPP. L. REV. 364 (1996). Copy supplied.

*The Voter Initiative Power Is Broader than the Referendum Power and Includes the Ability to Prospectively Repeal a Tax Ordinance: Rossi v. Brown*, 23 PEPP. L. REV. 1419 (1996). Copy supplied.

Contributor, *California Supreme Court Survey – Summaries*, 23 PEPP. L. REV. 1087 (1996). Copy supplied.

*A Trial Court's Failure to Give Jury Instructions on Elements of Sentence Enhancement for Use of a Deadly or Dangerous Weapon Under California Penal Code Section 12022(B) Warrants a Reversal Only Where It Is Reasonably Probable that Without the Error, the Jury Would Have Decided More Favorably for the Defendant: People v. Wims*, 23 PEPP. L. REV. 1057 (1996). Copy supplied.

Contributor, *California Supreme Court Survey – Summaries*, 23 PEPP. L. REV. 778 (1996). Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

None.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

August 31, 2010: Alumni speaker at UNLV's 2010 Sophomore Experience. The program was designed to encourage college sophomores to become more involved and mitigate drop outs. The subject matter of my speech was the different types of jobs, activities, and experiences that a college student may take advantage of to enhance his/her resume and become a more attractive candidate to a prospective employer. A copy of my notes is supplied.

I have not delivered any other speeches or talks.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

None.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not served as a judge.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? \_\_\_\_\_

- i. Of these, approximately what percent were:

jury trials: \_\_\_\_\_%  
bench trials: \_\_\_\_\_% [total 100%]

civil proceedings: \_\_\_\_\_%  
criminal proceedings: \_\_\_\_\_% [total 100%]

- b. Provide citations for all opinions you have written, including concurrences and dissents.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
  - d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
  - e. Provide a list of all cases in which certiorari was requested or granted.
  - f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
  - g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
  - h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
  - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:
- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
  - b. a brief description of the asserted conflict of interest or other ground for recusal;
  - c. the procedure you followed in determining whether or not to recuse yourself;

- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I have not served as a judge.

15. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held any public offices. I have not had any unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have not held office in or rendered services to any political party or election committee. I have not held a position or played a role in a political campaign.

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I have not served as a clerk to a judge.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced law alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.



1997 – Present  
 Kemp, Jones & Coulthard, LLP  
 3800 Howard Hughes Parkway 17th Floor  
 Las Vegas, Nevada 89169  
 Associate (1997 – 2004)  
 Equity Partner (2004 – present)

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

I joined my firm, then known as Harrison, Kemp & Jones, Chtd., as an associate attorney in May 1997 immediately upon graduation from law school. As this firm is a civil litigation boutique, my primary area of practice is, and has always been, civil litigation in both the state (Eighth Judicial District Court, Clark County, Nevada) and federal (U.S. District Court for the District of Nevada) courts, from pre-litigation preparation and research, through discovery, motion practice, and trial or other resolution.

The nature of my practice is, and has always been, widely varied. I have represented both plaintiffs and defendants in large and small scale personal injury matters, simple and complex commercial and business litigation, construction and lien litigation, real estate contract and transaction disputes, employment matters, insurance fraud and bad faith claims, and shareholder derivative suits. My firm was – and continues to be – a pioneer in Nevada’s construction defect litigation, and throughout my career I have always worked on complex construction defect actions and participated in the evolution of this specialized field from multiple-defect claims to single-defect/hybrid products liability actions, a transformation that has been influenced by the enactment of the Class Action Fairness Act and the increased use of Multidistrict Litigation. During my first year of practice I was part of the trial team on the very first construction-defect class action tried in this district, and more recently I was part of the trial team for the largest construction-defect class action in this district – a defective-plumbing case on behalf of 32,000 Southern Nevada homeowners. I have also represented landowners and developers in zoning and land use matters before municipal bodies and challenged those decisions with mandamus or judicial review actions in

the district courts. And I have worked on numerous inverse condemnation cases, the most recent of which resulted in an award of more than \$6 million after our successful bench trial against the City of North Las Vegas.

Before I joined my firm, I had drafted dozens of appellate briefs in criminal appeals pending before California's intermediate appellate courts while employed as a law clerk for Totaro & Shanahan. That experience caused my (now) partners to entrust me with the job of drafting the Respondents' Brief on the Merits in *Humana, Inc. et al. v. Forsyth* – an 84,000-member, health-care-fraud class action – after the United States Supreme Court granted certiorari in 1998. After our success in *Humana*, I became my firm's primary appellate attorney and was tasked with the responsibility of personally handling or overseeing nearly all of the appeals originating in our office, and I have also been retained on several occasions post-trial or other disposition to handle appeals in cases originating elsewhere. As a result, I have argued several cases before the Nevada Supreme Court and the United States Court of Appeals for the Ninth Circuit and drafted the briefs in those and many other appellate matters.

My work on the *Humana* case gave me immediate experience in class action litigation. I began co-drafting the Nevada section of the ABA's *Survey of State Class Action Law* in 1999, and my practice became heavily concentrated in class actions by approximately 2006, when we successfully moved for class certification in the *In re Kitec Litigation*. I have since worked on a number of class actions and continue to work on matters moving toward class certification or transfer into the MDL.

I was named an equity partner in my firm in October 2004. The transition from associate to partner gave me a new role as a business owner and manager. I was named Hiring Partner, and I am the partner primarily responsible for the hiring of all new associates at my firm.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

My typical clients are individuals or businesses with complex litigation claims to assert or defend against, or to preserve or challenge by appeal. They have included home builders and developers, car dealerships, casino properties, corporations, small business owners, receivers, and individuals or other entities pursuing claims (often as a class representative in a class action) against these very same types of organizations and also against lenders and municipalities.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Approximately 99% of my practice involves litigation and civil litigation appeals. Leading up to a trial, I appear in court frequently to argue motions and attend court-ordered conferences or other hearings; during trials, I appear in court daily. In general, I appear in court more than occasionally to participate in hearings or conferences.

My current caseload is approximately 50/50 state and federal, as I have numerous putative class actions for construction/product defect, a patent infringement case, and a mandamus/judicial review/due process violation action pending in the United States District Court for the District of Nevada.

- i. Indicate the percentage of your practice in:

- |                             |     |
|-----------------------------|-----|
| 1. federal courts:          | 20% |
| 2. state courts of record:  | 79% |
| 3. other courts:            | 0%  |
| 4. administrative agencies: | 1%  |

- ii. Indicate the percentage of your practice in:

- |                          |      |
|--------------------------|------|
| 1. civil proceedings:    | 100% |
| 2. criminal proceedings: | 0%   |

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I was sole counsel in one trial, first chair in one trial, and second chair in four trials. I have also been sole counsel in three private arbitration trials and second chair in a complex commercial arbitration trial. Finally, I have also been part of the trial team in nine trials (preparing jury instructions, reviewing and evaluating jury questionnaires and assisting in the jury selection process, and drafting briefs for mid- and post-trial motions).

- i. What percentage of these trials were:

- |              |     |
|--------------|-----|
| 1. jury:     | 58% |
| 2. non-jury: | 42% |

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

In 1998, I was the primary drafter of the Respondents' Brief on the Merits in *Humana, Inc. v. Forsyth*, Case No. 97-303. Copy supplied.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *Chittum v. Circus-Circus Casinos, Inc.*, Case No. A395450, jury trial before the Honorable Judge Redmon (deceased) of the Eighth Judicial District Court. I successfully defended Circus-Circus Casinos, Inc. in a personal injury case brought by a patron who sustained injuries after tripping and falling in a marked construction zone. I was first chair at the jury trial, which resulted in a full defense verdict in May 2000.

Opposing Counsel: Leonard Stone, Esq.  
John Shook, Esq.  
Shook & Stone, Chtd.  
710 South Fourth Street  
Las Vegas, Nevada 89101  
(702) 385-2220

2. *Gary Ellis Enterprises, Inc. and Fame Operating Co., Inc. v. Heers, et al.*, Case No. A531452, jury trial before the Honorable Judge Valerie Vega of the Eighth Judicial District Court. Along with my partner J. Randall Jones, Esq., I represented Gary Ellis Enterprises, Inc. and Fame Operating Company, Inc. in a complex commercial litigation matter between two rival casinos in which Ellis sought to enforce Heers' promise to merge the neighboring properties. I handled the discovery and was the primary person responsible for drafting pleadings, motions, jury instructions, and the jury questionnaire. I argued motions, sat second chair at trial, conducted voir dire, prepared witnesses and evidence, drafted the opening statement, and questioned witnesses. This matter settled several days into the jury trial in October 2007.

Opposing Counsel: Eric R. Olsen, Esq.  
Matt Zirzow, Esq.  
Gordon & Silver, Ltd.

3960 Howard Hughes Parkway, 9th Floor  
 Las Vegas, Nevada 89169  
 (702) 796-5555

3. *Baron, et al. v. Gerson*, Case No. A519742, jury trial before the Honorable Judge Herndon of the Eighth Judicial District Court. I along with J. Randall Jones, Esq. and my associate Matthew S. Carter, Esq. represented BAM GP, LLC; BCG, LLC; Diagnostic Imaging of Southern Nevada, LP; Michael A. Baron, M.D., Ltd.; and Michael A. Baron, M.D. in a complex commercial litigation matter arising from a physician's separation from Baron's practice group in violation of a non-compete agreement and having misappropriated trade secrets. I handled the discovery and was the primary person responsible for drafting pleadings, motions, jury instructions, and the jury questionnaire. I argued motions, sat second chair at the jury trial and assisted with voir dire, prepared witnesses and evidence, and drafted the judgment and post-trial motions. The jury returned a verdict in favor of my client in October 2008.

Opposing Counsel: Douglas M. Cohen, Esq.  
 Fennemore Craig Jones Vargas  
 300 South Fourth Street, #1400  
 Las Vegas, Nevada 89101  
 (702) 692-8026

4. *In Re: Kitec Fitting Litigation*, Case No. A493302, complex litigation with two jury trials before the Honorable Judge Timothy Williams of the Eighth Judicial District Court. Along with my partners J. Randall Jones, Esq. and William L. Coulthard, Esq., I represented the certified class (with dozens of subclasses) on behalf of more than 32,000 owners of homes plumbed with defective Kitec-brand plumbing systems. Years of aggressive litigation against dozens of defendants including the manufacturer, suppliers, plumbers, and builders; complex law and motion work; two successful jury trials in 2009; and multiple appeals resulted in more than \$250 million in good faith settlements and full replumbs for nearly all class members.

I was a key member of the class counsel trial team, with the primary responsibility of managing (and drafting the most critical aspects of) the highly complex law and motion written work (including motions for class and subclass certification, summary judgment motions and oppositions, motions in limine and oppositions, motions for good faith settlement and to enforce good faith settlements, motions for attorney's fees and costs, and virtually every other type of motion imaginable), drafting jury instructions and jury questionnaires, and settlement agreements. I also argued various motions to the trial court. Additionally, I was the primary counsel handling all appeals and original writ proceedings arising from this case (approximately eight total), and I argued before the en banc Nevada Supreme Court in March 2008. The two jury trials, both against plumbers responsible for installing the defective plumbing systems, resulted in verdicts of \$475,000 and \$8,749,400, followed by appeals and ultimately court-approved settlements.

Co-counsel: Francis I. Lynch, Esq.  
Charles "Dee" Hopper, Esq.  
Sergio Salzano, Esq.  
Lynch, Hopper & Salzano, LLP  
1640 Alta Drive #11  
Las Vegas, Nevada 89106  
(702) 868-1115

Opposing Counsel: James D. Carraway, Esq.  
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(702) 868-8000

Beau Sterling, Esq.  
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(702) 583-3333

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7670 West Lake Mead Boulevard #225  
Las Vegas, Nevada 89128  
(702) 258-6665

Kevin A. Brown, Esq.  
Brown, Bonn & Friedman, LLP  
5528 South Fort Apache Road

Las Vegas, Nevada 89148  
(702) 942-3900

5. *Hanson Aggregates Las Vegas, Inc., Bonanza Materials, Inc. v. Gerald Stuart Concrete, Inc., et al.*, Case No. A415383, bench trial before the Honorable Judge James Mahan of the Eighth Judicial District Court (before elevated to the Federal bench). Along with my partner J. Randall Jones, Esq., I represented owner/developer Stephanie Apartments, LLC in a construction contract dispute that was filed on February 23, 2000. I was second chair at the bench trial in July 2001. I drafted pleadings and motions, argued various motions, examined witnesses, drafted the bench brief, and developed strategy. We succeeded in reducing the amount of damages the Plaintiff was seeking.

Opposing Counsel: Brian K. Berman, Esq.  
721 Gass Avenue  
Las Vegas, Nevada 89101  
(702) 382-0702

6. *Hartco Construction Company v. Sunset Ridge Association, et al.*, Case No. A398702, bench trial before the Honorable Judge Porter of the Eighth Judicial District Court. I represented Sunset Ridge Company and Sunset Ridge Association in a construction contract breach/mechanic's lien foreclosure matter, filed on January 28, 1999. The allegations generally included failure to tender payment and poorly performed or incomplete work. I was the sole trial attorney in a bench trial in October 2002 and succeeded in reducing the amount of damages the Plaintiff was seeking by approximately 80%.

Opposing Counsel: Diana M. Antuna, Esq.  
Dotson & Qualey  
2320 Paseo Del Prado #B-205  
Las Vegas, Nevada 89102  
(702) 474-6677

7. *Lizmar Corporation dba Lizmar Medical Management v. R.D. Prabhu-Late K. Shete, M.D.'s Ltd. dba Red Rock Medical Group*, Case No. A562610, bench trial before the Honorable Judge Douglas Smith of the Eighth Judicial District Court. With my partner J. Randall Jones, Esq., I represented the Defendant in this breach of contract case for medical billing services, filed on May 2, 2008. I was second chair at the bench trial in February 2010 that resulted in a complete defense of the Plaintiffs' claims and a judgment in favor of our client. I drafted pleadings and motions; argued various motions, examined witnesses; developed strategy; and drafted the bench brief, the Findings of Facts and Conclusions of Law, the Judgment in favor of the Defendant, and post-judgment motions.

Opposing Counsel: David J. Winterton, Esq.  
211 North Buffalo Drive #A



Las Vegas, Nevada 89145  
(702) 363-0317

8. *5th & Centennial, LLC v. City of North Las Vegas, et al.*, Case No. A609283, bench trial before the Honorable Judge Mark Denton of the Eighth Judicial District Court. Along with my partner William L. Coulthard, Esq., I represent the Plaintiffs in this takings/pre-condemnation damages matter against the City of North Las Vegas filed on January 29, 2010. The eight-day bench trial resulted in a pre-condemnation judgment damages award for our clients of \$4,250,000 plus more than \$1,500,000 in post-judgment awards of fees, costs, and interest. I was part of the trial team and assisted in drafting motions, the trial brief, the findings of fact and conclusions of law, and the judgment. The City appealed, we cross-appealed, and I drafted the Respondents'/Cross Appellants' Briefs on appeal. Appellate briefing is still underway.

Co-counsel: John Peter Lee, Esq.  
830 Las Vegas Boulevard  
Las Vegas, Nevada 89101  
(702) 382-4044

Opposing Counsel: Brian Hardy, Esq.  
Micah Echols, Esq.  
Marquis, Aurbach & Coffing  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
(702) 942-2147

9. *VNU Business Media v. B.L. International, Inc., et al.*, Arbitration No. 79 133 00064 05 krli, complex commercial arbitration trial before Arbitrator Jay Earl Smith (deceased). Along with my partner J. Randall Jones, Esq., I represented B.L. International, Inc. and Brand Acquisitions, LLC in this complex commercial arbitration surrounding the rights to the Billboard Magazine trade name, which was filed on March 10, 2006. At the six-day commercial arbitration trial, I developed strategy, drafted the arbitration briefs, attended all days of the hearing, and examined witnesses. Post-arbitration issues and claims not resolved by the arbitration were assigned to the Eighth Judicial District Court's Business Court with a "complex" case designation. I had primary responsibility for nationwide discovery during both the arbitration and district court proceedings, all motion work (including numerous original writ proceedings to the Nevada Supreme Court), and drafting and negotiating an ultimate settlement in September 2010.

Opposing Counsel: Allan J. Arffa, Esq.  
Steve Herzog, Esq.  
Paul, Weiss, Rifkind, Wharton & Garrison, LLP  
1285 Avenue of the Americas

New York, New York 10019  
(212) 373-3000

Rex Garner, Esq.  
Morris Peterson  
300 South Fourth Street, Suite 900  
Las Vegas, Nevada 89101  
(702) 474-9400

Glenn A. Mitchell, Esq.  
Ari Casper, Esq.  
Stein, Mitchell & Mezines  
1100 Connecticut Avenue, N.W., Suite 1100  
Washington, DC 20036  
(202) 737-7777

Kirk Lenhard, Esq.  
Adam Bult, Esq.  
Brownstein Hyatt Farber Schreck, LLP  
100 City Parkway #1600  
Las Vegas, Nevada 89106  
(702) 464-7045

10. *Mattes v. Park Place, Inc., et al.*, U.S. Dist. Ct. (Nev.), CV-S-00-1090-JCM (LRL).  
My firm was hired to represent Park Place (the parent company of several resort properties) after a federal jury returned an \$8 million verdict in favor of a high-roller patron of the Paris Casino. We successfully moved for new trial, got the verdict set aside, and ultimately turned the entire case around by obtaining summary judgment in favor of Park Place, a decision that was affirmed on appeal to the Ninth Circuit in *Mattes v. Bally's Las Vegas*, 227 Fed. Appx. 567 (9th Cir. 2007). I drafted all the post-trial briefs and participated in the oral arguments before the district court, and I exclusively handled the Ninth Circuit appeal and argued the case before the panel.

Opposing Counsel: Kevin Mirch, Esq.  
Marie Mirch, Esq.  
Mirch Law Offices  
701 B Street, Suite 1310  
San Diego, California 92101  
(619) 501-6220

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s).

(Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

1. *Forsyth, et al. v. Humana, Inc.*, U.S. Dist. Ct. (Nev.) CV-S-89-249-DWH (LRL).  
This was an 84,000 member, health-care-fraud class action that was resolved after successful U.S. Supreme Court appeal (525 U.S. 299 (1999)). Although this matter commenced nearly a decade before I became licensed, had been dismissed by the district court and reversed by the Ninth Circuit, I entered the case in time to draft Respondents' Brief on the Merits to the Supreme Court of the United States after certiorari was granted in 1998. I assisted in the preparation for, and attended, the oral argument on November 30, 1998. I continued to work on the case after it was remanded to the district court and until its ultimate resolution by settlement.
2. *Slaughter, et al. v. Uponor, et al.*, U.S. Dist. Ct. (Nev.) CV-S-1223-RCJ-GWF, Judge Robert Jones. These were consolidated construction defect actions against the manufacturer, suppliers, and installers of allegedly defective plumbing products. Originally pled as a class action, this case involved (and continues to involve) complex motion work. The case was dismissed with prejudice, but then reinstated by the Ninth Circuit, 2012 WL 1201645 (Apr. 11, 2012). Numerous other putative class actions arising from the same construction defect have been consolidated into this matter and continue to be prosecuted. This is a complex, multiple plaintiff/defendant matter, and the plaintiffs are represented by a team of five law firms, including mine. I prepare most of the more substantial motion work (written product) in the district court, drafted the Ninth Circuit briefs, and prepared my partner J. Randall Jones to argue the appeal before the panel.
3. *Notable Criminal Experience.* During law school (summer of 1995), I worked as an extern in the Ventura County District Attorney's Office. I was given the responsibility of drafting or responding to various pretrial motions, and I watched several criminal trials that the office was working on, including a high-profile attempted murder trial.

Additionally, during my last two years of law school, I was employed by Totaro & Shanahan, a criminal defense appellate practice, whose work came from the California Appellate Project. I drafted dozens of appellate briefs on behalf of the Project's pro bono clients, for which I was required to review the trial transcript and all motions filed in the case to find and argue appealable issues. This experience gave me great familiarity with the criminal process and related evidentiary issues.

4. *Judge, Pepperdine's Moot Court Tournaments.* Nearly every year since graduation, I have served as a volunteer judge for Pepperdine's intraschool moot court tournament, the Vincent Dalsimer Moot Court competition. I have judged the competition briefs and the semi-final round of the competition. I am also part of the annual team of brief judges for Pepperdine's other moot court tournaments, including its interschool entertainment law moot court competition, and I have previously helped coach Pepperdine's interschool moot court teams.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught any courses.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I am an equity/owner/member in Kemp, Jones & Coulthard, LLP, which entitles me to share in the firm's profits as they are earned; I am also entitled to certain profit sharing under the firm's compensation and 401K plan.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

If I am confirmed, I have no plans, commitments, or agreements to pursue outside employment, with or without compensation, during my service with the court.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

If confirmed, I will carefully assess all actual or potential conflicts of interest in accordance with Canon 3 of the Code of Conduct for United States Judges and any other applicable rules, statutes, and practices. I expect to recuse myself from all cases involving my law firm for a significant period of time, and to recuse myself from all cases involving my husband's law firm (Snell & Wilmer). I also anticipate recusing myself from all cases involving clients I have served during my tenure at Kemp, Jones & Coulthard for a significant period of time following confirmation. I would also take great care to recuse myself from any cases involving Morgan Stanley, which manages my investment portfolio, and any other company related to my finances. In all instances, I will be diligent to avoid any conflict or appearance of conflict of interest.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed, I will employ all applicable guidelines, including Canon 3 of the Code of Conduct for United States Judges and other applicable rules, statutes, and practices, always mindful of the judiciary's responsibility to avoid actual conflicts and the appearance of them. I also anticipate seeking advice from my learned colleagues as appropriate.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I provided free legal services to Easter Seals of Southern Nevada from approximately 2004 to 2009; I have also served as lead or co-counsel on three class actions that I filed along with co-counsel at Legal Aid of Southern Nevada. All three class actions alleged misconduct by payday lenders – the first two matters alleged violations of Nevada's statutes regarding usurious fees and penalties; the third case seeks to set aside thousands of default judgments obtained against payday loan customers through acts alleged as a widespread scheme of fraud on the court.

Since 2009, I have been recognized by Legal Aid of Southern Nevada's Pro Bono Project for devoting at least 50 hours to pro bono matters annually. To date this year, I have spent in excess of 70 hours on pro bono cases, primarily the *Rapid Cash* matters. I was also the 2011 co-recipient of the Vince Consul Memorial Pro Bono Award.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so,

please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In March 2012, I spoke to Senator Harry Reid about my interest in a federal judgeship. On May 21, 2012, I received a telephone call from Senator Reid's staff, asking for additional details regarding my legal experience. I received a call from Senator Reid on June 11, 2012, during which we spoke again of my interest and Senator Reid asked additional questions about my practice and experience. On June 12, 2012, I received a call from Senator Reid's staff, who informed me that my name was being submitted to the White House for consideration.

Since June 13, 2012, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On July 17, 2012, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, D.C. On September 19, 2012, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10\*  
Rev. 1/2012

**FINANCIAL DISCLOSURE REPORT  
NOMINATION FILING**

*Report Required by the Ethics  
in Government Act of 1978  
(5 U.S.C. app. §§ 101-111)*

1. Person Reporting (last name, first, middle initial) Dorsey, Jennifer A.	2. Court or Organization US District Court - Nevada	3. Date of Report 09/19/2012
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination      Date 09/19/2012 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 1/1/2011 to 9/1/2012
7. Chambers or Office Address 3800 Howard Hughes Parkway, 17th Floor Las Vegas, Nevada 89169		
<b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Insert signature on last page.		

**I. POSITIONS.** (Reporting individual only; see pp. 9-13 of filing instructions.)

☐ NONE (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1. Equity Partner/Equity Shareholder	Kemp Jones & Coulthard, L.L.P.
2. Trustee	Trust #1
3.	
4.	
5.	

**II. AGREEMENTS.** (Reporting individual only; see pp. 14-16 of filing instructions.)

☐ NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1. 10/01/2004	Kemp Jones & Coulthard, LLP Limited Liability Partnership Agreement - Equity partner in law firm partnership
2.	
3.	

## FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting	Date of Report
Dorsey, Jennifer A.	09/19/2012

III. NON-INVESTMENT INCOME (Reporting individual and spouse; see pp. 17-24 of filing instructions.)

## A. Filer's Non-Investment Income

☐ NONE (No reportable non-investment income.)

DATE	SOURCE AND TYPE	INCOME <small>(yours, not spouse's)</small>
1. 2012	Kemp Jones & Coulthard, L.L.P./salary, guaranteed payments, and distributions	\$1,901,222.00
2. 2011	Kemp Jones & Coulthard, L.L.P./salary, guaranteed payments, and distributions	\$1,538,784.36
3. 2010	Kemp Jones & Coulthard, L.L.P./salary, guaranteed payments, and distributions	\$718,581.00
4.		

B. Spouse's Non-Investment Income - If you were married during any portion of the reporting year, complete this section.(Dollar amount not required except for honoraria.)☐ NONE (No reportable non-investment income.)

DATE	SOURCE AND TYPE
1. 2012	Snell & Wilmer L.L.P. - Salary
2. 2011	Board of Regents (UNLV) - Salary
3. 2010	Snell & Wilmer L.L.P. - Salary
4.	

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)☐ NONE (No reportable reimbursements.)

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1. Exempt				
2.				
3.				
4.				
5.				



**FINANCIAL DISCLOSURE REPORT**  
 Page 3 of 18

Name of Person Reporting	Date of Report
Dorsey, Jennifer A.	09/19/2012

**V. GIFTS.** *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*
☐ NONE *(No reportable gifts.)*

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.	Exempt		
2.			
3.			
4.			
5.			

**VI. LIABILITIES.** *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*
☒ NONE *(No reportable liabilities.)*

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.			
2.			
3.			
4.			
5.			

## FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting	Date of Report
Dorsey, Jennifer A.	09/19/2012

## VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
1. Kemp Jones & Coughard, LLP Profit Sharing Plan	E	Distribution	N	T	Exempt				
2. Snell & Wilmer Profit Sharing Plan	E	Interest	K	T					
3. Horizon Ridge Professional Park, L.P.	B	Interest	K	W					
4. US Series EE Savings Bonds	A	Interest	J	T					
5. American Funds Bond Fund of America 529	A	Interest	K	T					
6. American Funds Growth Fund of America 529	A	Interest	K	T					
7. American Funds Capital World Bond Fund 529	A	Interest	K	T					
8. American Funds EuroPacific Growth Fund 529	A	Interest	K	T					
9. American Funds New World Fund 529	A	Interest	K	T					
10. American Funds US Gov't Sec Fund 529	A	Interest	K	T					
11. American Funds Fund of America 529	A	Interest	K	T					
12. Trust #1									
13. - Wells Fargo Cash Accounts	A	Interest	K	T					
14. - Greenhaven Continuous Comm. Index Fund	A	Interest							
15. - US Commodity Index Fund	A	Interest							
16. - Powershares DB US Dollar Index Fund	A	Interest							
17. - JP Morgan Chase Reverse Convertible Option	A	Interest	J	T					

1. Income Gain Codes (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 I = \$15,001 - \$50,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	F = \$15,000 or less N = \$250,001 - \$500,000 P1 = \$25,000,001 - \$50,000,000	J = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	K = \$15,001 - \$50,000 Q = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$5,000,000	M = \$10,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	

## FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting	Date of Report
Dorsey, Jennifer A.	09/19/2012

## VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
18. - Morgan Stanley Cash Accounts	A	Interest	N	T					
19. - NAA 2006-AP1 bond	A	Interest	K	T					
20. - Chaseflex Trust 2005-1-A5 bond	A	Interest	K	T					
21. - Banc America FDG 2005-6 bond	A	Interest	J	T					
22. - Morgan Stanley Step Up Note	A	Interest	K	T					
23. - Legg Mason WA Short Duration Municipal Income Fund	A	Dividend	O	T					
24. - Halliburton stock	A	Dividend	J	T					
25. - Enterprise Partners stock	A	Interest	K	T					
26. - iShares Barclays 3-7 Year Treasury Fund	A	Dividend	K	T					
27. - ProShares Ultra 7-10 Year Treasury ETF	A	Dividend	K	T					
28. - ProShares Ultra S&P 500 ETF	A	Dividend	K	T					
29. - S&P 500 Index Fund	A	Dividend	K	T					
30. - 3M Company stock	A	Dividend	J	T					
31. - Agrium, Inc stock	A	Dividend	J	T					
32. - Altria Group, Inc. stock	A	Dividend	J	T					
33. - American Capital Agency stock	A	Dividend	J	T					
34. - AmeriGas Partners stock	A	Dividend	J	T					

1. Income Codes (See Columns B1 and D4)	A = \$1,000 or less F = \$30,000 - \$100,000 J = \$15,000 or less N = \$250,000 - \$500,000 P = \$25,000,000 - \$50,000,000 Q = Appraised U = Book Value	B = \$1,000 - \$2,500 G = \$100,000 - \$1,000,000 K = \$15,000 - \$50,000 O = \$500,000 - \$1,000,000 R = Cost (Real Estate Only) Y = Other	C = \$2,500 - \$5,000 H = \$1,000,000 - \$5,000,000 L = \$50,000 - \$100,000 P1 = \$1,000,000 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	D = \$5,000 - \$15,000 I2 = More than \$5,000,000 M = \$100,000 - \$250,000 P2 = \$5,000,000 - \$25,000,000 T = Cash Market	E = \$15,000 - \$50,000
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Name of Person Reporting	Date of Report
Dorsey, Jennifer A.	09/19/2012

**VII. INVESTMENTS and TRUSTS** -- *income, value, transactions (includes those of spouse and dependent children; see pp. 34-60 of filing instructions).*

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "X" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
35. - Amphenol Corp. stock	A	Dividend	J	T					
36. - Apple, Inc. stock	A	Dividend	J	T					
37. - Berkshire Hathaway Class B stock	A	Dividend	J	T					
38. - Briggs & Stratton stock	A	Dividend	J	T					
39. - Bristol Myers Squibb stock	A	Dividend	J	T					
40. - Casey's General Stores stock	A	Dividend	J	T					
41. - Cenovus Energy stock	A	Dividend	J	T					
42. - CenturyLink stock	A	Dividend	J	T					
43. - Chevron Corp. stock	A	Dividend	J	T					
44. - Cisco Systems stock	A	Dividend	J	T					
45. - Coca Cola stock	A	Dividend	J	T					
46. - Cognizant Technology Solutions stock	A	Dividend	J	T					
47. - Cotten & Steers Limited Duration stock	A	Dividend	J	T					
48. - ConocoPhillips stock	A	Dividend	J	T					
49. - CVS Caremark Corp stock	A	Dividend	J	T					
50. - Devon Energy stock	A	Dividend	J	T					
51. - Diamond Offshore Drilling stock	A	Dividend	J	T					

- |  |   |  |   |                           |
|--|---|--|---|---------------------------|
| 1. Income Gain Codes:<br>(See Columns B1 and D4) | A = \$1,000 or less<br>B = \$500 (000 - 3,000,000)  | R = \$1,001 - \$2,500<br>S = \$2,501 - \$5,000   | C = \$52,001 - \$50,000<br>D = \$55,001 - \$100,000   | E = \$45,001 - \$90,000   |
| 2. Value Codes:<br>(See Columns C1 and D3)       | J = \$50,000 or less<br>K = \$51,000 (000 - \$500,000)                                      | G = \$100,001 - \$1,000,000<br>H = \$500,001 - \$5,000,000   | L = \$40,000 - \$100,000<br>M = \$100,001 - \$200,000 | N = \$200,001 - \$250,000 |
| 3. Valuation Method Codes:<br>(See Column C2)    | P = \$25,000 (000 - \$500,000)<br>Q = Appraisal<br>R = Cost (Real Estate Only)<br>S = Other | O = \$500,001 - \$1,000,000<br>P = \$1,000,001 - \$5,000,000<br>Q = \$5,000,001 - \$50,000,000<br>R = More than \$50,000,000 | T = Cash Market<br>U = Assessment<br>V = Estimated    |                           |

## FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting

Dorsey, Jennifer A.

Date of Report

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## VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
52. - Dorman Products stock	A	Dividend	J	T					
53. - DuPont El De Nemours stock	A	Dividend	J	T					
54. - Ecolab, Inc. stock	A	Dividend	J	T					
55. - El Paso Pipeline Partners stock	A	Dividend	J	T					
56. - Enbridge Energy Partners stock	A	Dividend	J	T					
57. - Energy Select SPDR stock	A	Dividend	J	T					
58. - SPDR - Consumer Discretionary stock	A	Dividend	J	T					
59. - Energy Transfer Equity LP stock	A	Dividend	J	T					
60. - Energy Transfer Partners LP stock	A	Dividend	J	T					
61. - EV Energy Partners stock	A	Dividend	J	T					
62. - Express Scripts Holding Co. stock	A	Dividend	J	T					
63. - First Trust Tech AlphaDEX ETF	A	Dividend	J	T					
64. - General Electric stock	A	Dividend	J	T					
65. - General Mills stock	A	Dividend	J	T					
66. - Genesis Energy, LP stock	A	Dividend	J	T					
67. - Google, Inc. stock	A	Dividend	J	T					
68. - Guggenheim Enhanced Short Duration ETF	A	Dividend	J	T					

1. Income/Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000	D = \$5,001 - \$15,000 I = More than \$5,000,000 M = \$100,001 - \$250,000	E = \$15,001 - \$50,000
2. Value Codes: (See Columns C1 and D3)	N = \$250,001 - \$500,000 P = \$25,000,001 - \$50,000,000 Q = Appraisal U = Book Value	O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Appraisal W = Estimated	P2 = \$5,000,001 - \$25,000,000	
3. Value Method Codes: (See Column C2)			T = Cash Market		

☐ NONE (No reportable income, assets, or transactions.)

1. Income Code Codes: (See Columns B1 and D4)	A = \$1,000 or less J = \$250,001 - \$500,000	B = \$1,001 - \$2,500 K = \$375,001 - \$1,000,000	C = \$2,501 - \$5,000 L = \$1,000,001 - \$5,000,000	D = \$5,001 - \$10,000 M = More than \$5,000,000	E = \$15,001 - \$50,000
2. Value Codes: (See Columns C1 and I3)	F = \$15,000 or less N = \$250,001 - \$500,000 P = \$25,000,001 - \$50,000,000	G = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 Q = \$500,001 - \$1,000,000	H = \$1,000,001 - \$5,000,000 R = \$5,000,001 - \$10,000,000 S = More than \$10,000,000	I = \$50,001 - \$100,000 T = \$100,001 - \$250,000 U = More than \$250,000	J = \$100,001 - \$250,000 V = More than \$250,000
3. Value Method Codes: (See Column C2)	Q = Appraisal U = Bank Value	R = Real Estate Value Only V = Other	S = Assessment W = Estimated	T = Cash Market	

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Name of Person Reporting	Date of Report
Dorsey, Jennifer A.	09/19/2012

## VII. INVESTMENTS and TRUSTS -- income, value, transaction (includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount, Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value, Code 2 (J-P)	Value, Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value, Code 2 (J-P)	Gain, Code 1 (A-H)	Identity of buyer/seller (if private transaction)
86. - Kraft Foods stock	A	Dividend	J	T					
87. - Life Technologies Corp. stock	A	Dividend	J	T					
88. - Lincoln Electric Holdings, Inc. stock	A	Dividend	J	T					
89. - Linn Energy LLC stock	A	Dividend	J	T					
90. - LKQ Corp. stock	A	Dividend	J	T					
91. - Magellan Midstream Partners, LP stock	A	Dividend	J	T					
92. - Markwest Energy Partners	A	Dividend	J	T					
93. - Mastercard, Inc. stock	A	Dividend	J	T					
94. - Materion Corp. stock	A	Dividend	J	T					
95. - McDonald's Corp. stock	A	Dividend	J	T					
96. - Merck & Co. stock	A	Dividend	J	T					
97. - Middleby Corp. stock	A	Dividend	J	T					
98. - Monro Muffler & Brake stock	A	Dividend	J	T					
99. - NCR Corp. stock	A	Dividend	J	T					
100. - Nike, Inc. stock	A	Dividend	J	T					
101. - Novo Nordisk A/S stock	A	Dividend	J	T					
102. - Nucor Corp. stock	A	Dividend	J	T					

1. Income-Grant Codes (See Columns B1 and D4)	A <\$1,000 or less F <\$50,001 - \$100,000 J <\$15,000 or less N <\$20,001 - \$500,000 P1 <\$25,000,001 - \$50,000,000 Q >Appraisal U >Book Value	B <\$1,001 - \$2,500 G <\$30,001 - \$100,000 K <\$15,001 - \$50,000 O <\$300,001 - \$1,000,000 R >Cost (Real Estate Only) V >Other	C <\$2,501 - \$5,000 H1 <\$1,000,001 - \$5,000,000 L <\$50,001 - \$100,000 P1 <\$1,000,001 - \$5,000,000 P4 >More than \$50,000,000 S >Assessment W >Estimated	D <\$5,001 - \$15,000 H2 >More than \$5,000,000 M <\$100,001 - \$250,000 P2 <\$5,000,001 - \$25,000,000 T >Cash Market	E <\$15,001 - \$50,000
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## VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp.34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yyyy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller of private transaction
103. - Nustar Energy LP stock	A	Dividend	J	T					
104. - Oneok Partners, LP stock	A	Dividend	J	T					
105. - Oracle Corp. stock	A	Dividend	J	T					
106. - Pall Corp. stock	A	Dividend	J	T					
107. - PepsiCo, Inc. stock	A	Dividend	J	T					
108. - Perrigo Co. stock	A	Dividend	J	T					
109. - Phillip Morris International, Inc. stock	A	Dividend	J	T					
110. - Phillips 66 stock	A	Dividend	J	T					
111. - Plains All American Pipeline, LP stock	A	Dividend	J	T					
112. - Powershares DB Commodity Index Fund	A	Dividend	J	T					
113. - Priceline.com stock	A	Dividend	J	T					
114. - Proctor & Gamble stock	A	Dividend	J	T					
115. - Powershares DB US Dollar Index Bullish & Bearish Fund	A	Dividend	J	T					
116. - Powershares DB Precious Metals Fund	A	Dividend	J	T					
117. - Regency Energy Partners, LP stock	A	Dividend	J	T					
118. - Royal Dutch Shell PLC	A	Dividend	J	T					
119. - Schlumberger, Ltd. stock	A	Dividend	J	T					

1. Income Gain Codes: (See Columns B(1) and D(4))	A <\$1,000 or less F <\$50,001 - \$100,000	B <\$1,001 - \$2,000 G <\$100,001 - \$1,000,000	C <\$2,501 - \$5,000 H <\$1,000,001 - \$5,000,000	D <\$5,001 - \$15,000 I2 <More than \$5,000,000	E <\$15,001 - \$50,000
2. Value Codes: (See Columns C(1) and D(5))	J <\$15,000 or less N <\$250,001 - \$500,000 P1 <\$25,000,001 - \$50,000,000	K <\$15,001 - \$50,000 O <\$500,001 - \$1,000,000	L <\$50,001 - \$100,000 P1 <\$1,000,001 - \$5,000,000 P4 <More than \$5,000,000	M <\$100,001 - \$250,000 P2 <\$5,000,001 - \$25,000,000	
3. Value Method Codes: (See Column C(2))	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	



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## VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-40 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
120. - Seadrill, Ltd. stock	A	Dividend	J	T					
121. - Siemens Aktiengesellschaft stock	A	Dividend	J	T					
122. - Southern Copper Corp. stock	A	Dividend	J	T					
123. - SPDR S&P Dividend ETF	A	Dividend	J	T					
124. - SPDR S&P Pharmaceuticals ETF	A	Dividend	J	T					
125. - Sunoco Energy, Inc. stock	A	Dividend	J	T					
126. - Terex Corp. stock	A	Dividend	J	T					
127. - Teva Pharmaceuticals stock	A	Dividend	J	T					
128. - Texas Instruments stock	A	Dividend	J	T					
129. - The Scotts Miracle-Gro Company stock	A	Dividend	J	T					
130. - TJX Companies stock	A	Dividend	J	T					
131. - Tupperware Brands Corp. stock	A	Dividend	J	T					
132. - United Technologies Corp. stock	A	Dividend	J	T					
133. - Utilities Select SPDR ETF	A	Dividend	J	T					
134. - Valmont Industries stock	A	Dividend	J	T					
135. - Wells Fargo & Co. stock	A	Dividend	J	T					
136. - Williams Partners, Ltd. stock	A	Dividend	J	T					

1. Income Gain Codes (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$5,000,001 - \$5,000,000	D = \$5,001 - \$15,000 I2 = More than \$5,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	J = \$15,000 or less N = \$250,001 - \$500,000 P1 = \$25,000,001 - \$50,000,000	K = \$15,001 - \$50,000 O = \$200,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$5,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value	R = Other (Real Estate Only) V = Other	S = Assessed W = Estimated	T = Cash Market	

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**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (includes those of spouse and dependent children; see pp. 34-40 of filing instructions.)
☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
137. - WMS Industries stock		None	J	T					
138. - Xylem, Inc. stock	A	Dividend	J	T					
139. - AES Corporation bond	A	Interest	J	T					
140. - Alabama Power Co. bond	A	Interest	J	T					
141. - Alliant Techsystems, Inc. bond	A	Interest	J	T					
142. - American West Airlines SER 00-G bond	A	Interest	J	T					
143. - Amerigas Partners, LP bond	A	Interest	J	T					
144. - Apache Corp. bond	A	Interest	J	T					
145. - Arch Coal, Inc. bond	A	Interest	J	T					
146. - AT&T Inc. bond	A	Interest	J	T					
147. - Avis Budget Car Rental, LLC bond	A	Interest	J	T					
148. - Bank of America Corp. bond	A	Interest	J	T					
149. - BE Aerospace, Inc.	A	Interest	J	T					
150. - Beckton Dickinson bond	A	Interest	J	T					
151. - Caterpillar, Inc. bond	A	Interest	J	T					
152. - CCO Holdings, LLC bond	A	Interest	J	T					
153. - Centurylink, Inc. bond	A	Interest	J	T					

1. Income Tax Codes (See Columns B1 and D4)	A <\$1,000 or less F >\$50,001 - \$100,000 J >\$15,000 or less N >\$250,001 - \$500,000 P1 >\$25,000,001 - \$50,000,000 Q = Appraisal U = Book Value	B >\$1,001 - \$2,500 G >\$100,001 - \$1,000,000 K >\$15,001 - \$50,000 O >\$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C >\$2,501 - \$5,000 H >\$1,000,001 - \$5,000,000 L >\$50,001 - \$100,000 P1 >\$1,000,001 - \$5,000,000 P2 >More than \$5,000,000 S = Accretion W = Unreported	D >\$5,001 - \$15,000 I2 >More than \$5,000,000 M >\$100,001 - \$250,000 P2 >\$5,000,001 - \$25,000,000 T = Cash Market	E >\$15,001 - \$50,000
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## VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X1" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
154. - Chesapeake Energy Corp. bond	A	Interest	J	T					
155. - Cisco Systems, Inc. bond	A	Interest	J	T					
156. - Citigroup, Inc. bond	A	Interest	J	T					
157. - Continental Airlines 2010-A bond	A	Interest	J	T					
158. - Con. Beverages, Inc. bond	A	Interest	J	T					
159. - Danaher Corp. bond	A	Interest	J	T					
160. - Davita, Inc. bond	A	Interest	J	T					
161. - Delta Airlines 2010 bond	A	Interest	J	T					
162. - Dover Corp. bond	A	Interest	J	T					
163. - Duke Energy Carolinas bond	A	Interest	J	T					
164. - Ferrell Gas, LP bond	A	Interest	J	T					
165. - Ford Motor Credit bond	A	Interest	J	T					
166. - Forest Oil Corp. bond	A	Interest	J	T					
167. - Frontier Communications Corp. bond	A	Interest	J	T					
168. - General Dynamics Corp. bond	A	Interest	J	T					
169. - General Electric Cap Corp. bond	A	Interest	J	T					
170. - Graphic Packaging International bond	A	Interest	J	T					

1. Income Gain Codes  
(See Columns B1 and D4)
2. Value Codes  
(See Columns C1 and D3)
3. Value Method Codes  
(See Column C2)
- A = \$1,000 or less  
F = \$51,001 - \$100,000  
J = \$15,001 - \$50,000  
N = \$250,001 - \$500,000  
P5 = \$25,000,001 - \$50,000,000  
Q = Appraisal  
T = Book Value
- B = \$1,001 - \$2,500  
G = \$100,001 - \$1,000,000  
K = \$15,001 - \$50,000  
O = \$500,001 - \$1,000,000  
W = Cost (Real Estate Only)  
Y = Other
- C = \$2,501 - \$5,000  
H = \$1,000,001 - \$5,000,000  
L = \$50,001 - \$100,000  
P1 = \$1,000,001 - \$5,000,000  
P4 = More than \$50,000,000  
S = Accrual  
W = Estimated
- D = \$5,001 - \$15,000  
I2 = More than \$5,000,000  
M = \$100,001 - \$250,000  
P2 = \$5,000,001 - \$25,000,000  
T = Cash Market
- E = \$15,001 - \$50,000

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**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)
☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 3 (A-H)	Identity of buyer/seller (if private transaction)
171. -- HCA Holdings, Inc. bond	A	Interest	J	T					
172. -- Healthsouth Corporation bond	A	Interest	J	T					
173. -- Herz Corporation bond	A	Interest	J	T					
174. -- Hewlett Packard Co. bond	A	Interest	J	T					
175. -- Huntsman International, LLC bond	A	Interest	J	T					
176. -- International Lease Finance Corp. bond	A	Interest	J	T					
177. -- Iron Mountain, Inc. bond	A	Interest	J	T					
178. -- JP Morgan Chase & Co. bond	A	Interest	J	T					
179. -- L-3 Communications bond	A	Interest	J	T					
180. -- Lamar Media Corp. bond	A	Interest	J	T					
181. -- Mediatecom LLC bond	A	Interest	J	T					
182. -- Medtronic, Inc. bond	A	Interest	J	T					
183. -- Merck & Co. bond	A	Interest	J	T					
184. -- Morgan Stanley corporate bond	A	Interest	J	T					
185. -- Peabody Energy Corporation bond	A	Interest	J	T					
186. -- PepsiCo, Inc. bond	A	Interest	J	T					
187. -- PerkinElmer, Inc. bond	A	Interest	J	T					

1. Income Gain Codes:	A = \$1,000 or less	B = \$1,001 - \$2,500	C = \$2,501 - \$5,000	D = \$5,001 - \$15,000	E = \$15,001 - \$50,000
(See Columns B1 and D4)	F = \$50,001 - \$100,000	G = \$100,001 - \$1,000,000	H = \$1,000,001 - \$5,000,000	I2 = More than \$5,000,000	
2. Value Codes:	J = \$15,000 or less	K = \$15,001 - \$50,000	L = \$50,001 - \$100,000	M = \$100,001 - \$250,000	
(See Columns C1 and D3)	N = \$250,001 - \$500,000	O = \$500,001 - \$1,000,000	P1 = \$1,000,001 - \$5,000,000	P2 = \$5,000,001 - \$25,000,000	
	P3 = \$25,000,001 - \$50,000,000		P4 = More than \$50,000,000		
3. Value Method Codes:	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cook Market	
(See Column C2)	U = Book Value	V = Other	W = Estimated		

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**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)
☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
188. - PNC Funding Corp. bond	A	Interest	J	T					
189. - Polymer Group, Inc. bond	A	Interest	J	T					
190. - Praxair, Inc. bond	A	Interest	J	T					
191. - Public Service Company of Colorado bond	A	Interest	J	T					
192. - Range Resources Corp. bond	A	Interest	J	T					
193. - Raytheon Company bond	A	Interest	J	T					
194. - RR Donnelly & Sons Company bond	A	Interest	J	T					
195. - SPX Corporation bond	A	Interest	J	T					
196. - Suburban Propane Partners bond	A	Interest	J	T					
197. - Teckay Corp. bond	A	Interest	J	T					
198. - Tenneco, Inc. bond	A	Interest	J	T					
199. - ThermoFisher Scientific bond	A	Interest	J	T					
200. - Time Warner Cable, Inc. bond	A	Interest	J	T					
201. - Transdigm, Inc. bond	A	Interest	J	T					
202. - United Rentals bond	A	Interest	J	T					
203. - US Bancorp bond	A	Interest	J	T					
204. - Verizon Communications bond	A	Interest	J	T					

## 1. Income Class Codes

(See Columns B1 and D4)

## 2. Value Codes

(See Columns C1 and D3)

## 3. Value Method Codes

(See Column C2)

A = \$1,000 or less

F = \$50,001 - \$100,000

J = \$15,000 or less

N = \$250,001 - \$500,000

Q = Appraisal

P = Book Value

B = \$1,001 - \$2,500

G = \$100,001 - \$1,000,000

K = \$15,001 - \$50,000

O = \$500,001 - \$1,000,000

R = Cost (Real Estate Only)

V = Other

C = \$2,501 - \$5,000

H = \$1,000,001 - \$5,000,000

L = \$50,001 - \$100,000

P1 = \$1,000,001 - \$5,000,000

S = Assessment

W = Estimated

D = \$5,001 - \$15,000

I1 = \$1,000,001 - \$5,000,000

E = \$15,001 - \$50,000

P2 = \$5,000,001 - \$25,000,000

T = Cash Market

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**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "XX" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount	Type (e.g.,	Value	Value	Type (e.g.,	Date	Value	Gain	Identity of
	Code 1 (A-H)	div., rent, or int.)	Code 2 (J-P)	Method Code 3 (Q-W)	buy, sell, redemption)	mm/dd/yy	Code 2 (J-P)	Code 1 (A-H)	buyer/seller (if private transaction)
205. - Wal-Mart Stores bond	A	Interest	J	T					
206. - Weatherford International bond	A	Interest	J	T					
207. - Wells Fargo & Co. bond	A	Interest	J	T					

1. Income Type Codes (See Columns B1 and D3)	A=\$1,000 or less F=\$80,001 - \$100,000	B=\$1,001 - \$2,500 G=\$100,001 - \$1,000,000	C=\$2,501 - \$5,000 H=\$5,000,001 - \$5,000,000	D=\$5,001 - \$15,000 P2=\$5,000,001 - \$250,000	E=\$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	I=\$15,000 or less N=\$250,001 - \$500,000	K=\$15,001 - \$50,000 O=\$500,001 - \$1,000,000	L=\$50,001 - \$100,000 P1=\$1,000,001 - \$5,000,000	M=\$100,001 - \$250,000 P2=\$5,000,001 - \$25,000,000	
3. Value Method Codes (See Column C2)	Q=Appraisal U=Book Value	R=Cost (Real Estate Only) V=Other	S=Assessment W=Estimated	T=Cash Market	

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**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.** *(Indicate part of report.)*

Part VII, line 1: income was from both interest and distribution

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**IX. CERTIFICATION.**

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: *s/* Jennifer A. Dorsey

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
Suite 2-301  
One Columbus Circle, N.E.  
Washington, D.C. 20544



## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		475	281	Notes payable to banks-secured			
U.S. Government securities			846	Notes payable to banks-unsecured			
Listed securities - see schedule	1	741	294	Notes payable to relatives			
Unlisted securities - see schedule		30	000	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable - see schedule		478	000
Real estate owned - see schedule	1	350	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		70	000				
Cash value-life insurance							
Other assets itemize:							
Municipal bonds		48	874				
Law Firm Profit Sharing Plans		357	341				
				Total liabilities		478	000
				Net Worth	3	595	636
Total Assets	4	073	636	Total liabilities and net worth	4	073	636
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

## FINANCIAL STATEMENT

## NET WORTH SCHEDULES

<u>Listed Securities</u>	
3M Company stock	\$ 11,112
Agrium, Inc. stock	8,362
Altria Group Inc. stock	3,396
American Capita Agency stock	1,394
AmeriGas Partners stock	2,312
Amphenol Corp. stock	5,783
Apple, Inc. stock	9,979
Berkshire Hathaway Class B stock	4,639
Briggs & Stratton Corp. stock	4,330
Bristol Myers Squibb Co. stock	2,476
Casey's General Stores, Inc. stock	3,676
Cenovus Energy, Inc. stock	7,194
CenturyLink Inc. stock	1,690
Chevron Corp. stock	4,486
Cisco Systems, Inc. stock	7,823
Coca Cola Co. stock	2,992
Cognizant Technology Solutions Corp. stock	3,535
Cohen & Steers Limited Duration closed-end stock	10,009
ConocoPhillips stock	8,802
Consumer Discretionary SPDR (ETF)	2,915
CVS Caremark Corp. stock	5,694
Devon Energy Corp. stock	3,759
Diamond Offshore Drilling, Inc. stock	4,691
Dorman Products, Inc. stock	5,306
Du Pont El De Nemours & Co. stock	11,194
Ecolab, Inc. stock	3,202
El Paso Pipeline Partners, LP stock	5,501
Enbridge Energy Partners, LP stock	2,799
Energy Select Sector SPDR (ETF)	4,435
Energy Transfer Equity LP stock	10,328
Energy Transfer Partners, LP stock	5,852
Enterprise Products Partners, LP stock	35,885
EV Energy Partners LP stock	1,758
Express Scripts Holding Co. stock	3,444
First Trust Tech AlphaDEX Fund (ETF)	5,358
General Electric Co. stock	2,071
General Mills Inc. stock	787
Genesis Energy, LP stock	6,529
Google, Inc. stock	6,851
Guggenheim Enhanced Short Duration Bond ETF	2,500
Guggenheim S&P 500 Equal Weight ETF	5,212

Halliburton Co. stock	3,276
Ingersoll-Rand PLC stock	8,183
Intel Corp. stock	4,345
Intuit, Inc. stock	3,512
iShares Barclays 1-3 Year Treasury Bond Fund	7,437
iShares Barclays 3-7 Year Treasury Bond Fund	35,165
iShares Barclays Aggregate Bond Fund	14,608
iShares Dow Jones U.S. Real Estate Index Fund	4,266
iShares High Dividend Equity Fund	10,608
iShares IBoxx \$ High Yield Corporate Bond Fund	4,986
iShares IBoxx Investment Grade Corporate Bond Fund	8,096
Johnson & Johnson stock	7,417
JPMorgan Chase Capital XVI Alerian MLP Index ETN	3,964
JPMorgan Chase & Co. stock	3,714
Kellogg Co. stock	2,026
Kimberly Clark Corp. stock	1,672
Kinder Morgan Energy Partners, LP stock	13,243
Kinder Morgan Management, LLC stock	6,152
Kraft Foods, Inc. stock	9,132
Life Technologies Corp. stock	5,964
Lincoln Electric Holdings Inc. stock	2,888
Linn Energy LLC stock	9,185
LKQ Corp. stock	4,529
Magellan Midstream Partners, LP stock	7,882
Markwest Energy Partners, LP stock	10,567
Mastercard, Inc. stock	5,075
Materion Corp. stock	956
McDonalds Corp. stock	3,580
Merck & Co., Inc. stock	3,229
Middleby Corp. stock	6,333
Monro Muffler & Brake stock	4,062
NCR Corp. stock	5,821
Nike, Inc. stock	2,434
Novo Nordisk A/S (ADR)	7,384
Nucor Corp. stock	4,330
Nustar Energy LP stock	3,500
Oneok Partners, LP stock	6,421
Oracle Corp. stock	12,344
Pall Corp. stock	4,441
Pepsico, Inc. stock	6,519
Perrigo Co. stock	6,598
Philip Morris International, Inc. stock	1,786
Phillips 66 stock	1,680
Plains All American Pipeline, LP stock	12,114
Powershares DB Commodity Index Tracking Fund	3,368
Priceline.com Inc new stock	4,232

Proctor & Gamble stock	4,031
ProShares Ultra 7-10 Year Treasury ETF	24,259
ProShares Ultra S&P 500 ETF	19,419
PowerShares DB US Dollar Index Bullish & Bearish Fund	7,225
PowerShares DB Precious Metals Fund	2,043
Regency Energy Partners, LP stock	5,137
Royal Dutch Shell plc (ADR)	2,527
Schlumberger, Ltd. stock	3,619
Seadrill, Ltd. stock	2,061
Siemens Aktiengesellschaft stock	7,542
Southern Copper Corp. stock	3,400
S&P 500 Index Fund stock	42,138
SPDR S&P Dividend (ETF)	2,572
SPDR S&P Pharmaceuticals (ETF)	5,470
Suncor Energy, Inc. stock	6,100
Terex Corp. stock	4,524
Teva Pharmaceuticals stock	4,156
Texas Instruments stock	6,824
The Scotts Miracle-Gro Company stock	3,749
TJX Companies, Inc. stock	4,121
Tupperware Brands Corp. stock	3,744
United Technologies Corp. stock	4,791
Utilities Select SPDR (ETF)	5,380
Valmont Industries stock	2,535
Wells Fargo & Co. stock	4,764
Williams Partners, Ltd stock	5,519
WMS Industries Inc. stock	2,549
Xylem, Inc. stock	6,680
American Funds Bond Fund of America -529C	17,770
American Funds Capital World Bond Fund -529C	9,360
American Funds EuroPacific Growth Fund -529C	9,509
American Funds Growth Fund of America -529C	34,970
American Funds New World Fund -529C	8,965
American Funds US Gov't Sec Fund -529C	10,028
American Funds Fund of America -529C	13,529
Legg Mason WA Short Duration Municipal Income Fund	500,962
AES Corporation corporate bond	3,495
Alabama Power Co. corporate bond	5,620
Alliant Techsystems, Inc. corporate bond	3,218
American West Airlines SER 00-G corporate bond	2,352
Amerigas Partners, LP corporate bond	3,120
Apache Corp. corporate bond	5,516
Arch Coal, Inc. corporate bond	2,715
AT&T Inc. corporate bonds	11,442
Avis Budget Car Rental, LLC corporate bond	3,330
Banc America Large Loan Trust FDG 2005-6 2-A-9	5,031

Bank of America Corp. corporate bond	5,326
BE Aerospace, Inc. corporate bond	3,315
Beckton Dickinson corporate bond	5,415
Caterpillar, Inc. corporate bond	5,701
CCO Holdings, LLC/CAP Corp. corporate bond	3,270
Centurylink, Inc. corporate bond	3,199
Chaseflex Trust 2005-1 1-A5 corporate bond	26,068
Chesapeake Energy Corp. corporate bond	1,025
Cisco Systems, Inc. corporate bond	5,835
Citigroup, Inc. corporate bond	5,545
Continental Airlines 2010-A corporate bond	5,034
Cott Beverages, Inc. corporate bond	3,308
Danaher Corp. corporate bond	5,651
Davita, Inc. corporate bond	3,203
Delta Airlines 2010-2A corporate bond	4,913
Dover Corp. corporate bond	5,780
Duke Energy Carolinas corporate bond	5,645
Ferrell Gas, LP/Ferrellgas Finance corporate bond	3,218
Ford Motor Credit corporate bond	3,702
Forest Oil Corp. corporate bond	2,936
Frontier Communications Corp. s corporate bond	3,345
General Dynamics Corp. corporate bond	5,654
General Electric Cap Corp. corporate bond	5,525
Graphic Packaging International, Inc. corporate bond	3,345
HCA Holdings, Inc. corporate bond	3,341
Healthsouth Corporation corporate bond	3,278
Hertz Corporation corporate bond	3,263
Hewlett Packard Co. corporate bond	5,000
Huntsman International, LLC corporate bond	3,435
International Lease Finance Corp. corporate bonds	8,783
Iron Mountain, Inc. corporate bond	3,206
JP Morgan Chase & Co. corporate bond	5,543
JPMorgan Chase & Co. Reverse Convertible Note	10,031
L-3 Communications Corp. corporate bond	5,484
Lamar Media Corp. corporate bond	3,315
Mediacom LLC/Mediacom Capital Corp. corporate bond	3,330
Medtronic, Inc. corporate bond	5,674
Merck & Co., Inc. corporate bond	5,669
Morgan Stanley corporate bond	5,122
Morgan Stanley Step Up Note	24,836
NAA 2006-AP1 A2 corporate bond	16,814
Peabody Energy Corporation corporate bond	3,203
Pepsico, Inc. corporate bond	5,295
Perkinelmer, Inc. corporate bond	11,046
PNC Funding Corp. corporate bond	5,667
Polymer Group, Inc. corporate bond	3,218

Praxair, Inc. corporate bond	5,584
Public Service Company of Colorado corporate bond	5,483
Range Resources Corp. corporate bond	1,041
Raytheon Company corporate bond	5,789
RR Donnelley & Sons Company corporate bond	2,030
SPX Corporation corporate bond	3,330
Suburban Propane Partners corporate bond	3,195
Teekay Corp. corporate bond	3,113
Tenneco, Inc. corporate bond	3,270
Thermo Fisher Scientific corporate bond	5,630
Time Warner Cable, Inc. corporate bond	5,471
Transdigm, Inc. corporate bond	3,330
United Rentals corporate bond	3,375
US Bancorp corporate bond	10,662
Verizon Communications corporate bond	5,894
Wal-Mart Stores corporate bond	5,602
Weatherford International corporate bond	5,361
Wells Fargo & Co. corporate bond	5,727
Total Listed Securities	<u>\$ 1,741,294</u>

Unlisted Securities

Horizon Ridge Professional Park LP	<u>\$ 30,000</u>
Total Unlisted Securities	<u>\$ 30,000</u>

Real Estate Owned

Personal residence	\$ 600,000
Vacation home	<u>750,000</u>
Total Real Estate Owned	<u>\$ 1,350,000</u>


Real Estate Mortgages Payable

Personal residence	\$ 395,000
Family residence	<u>83,000</u>
Total Real Estate Mortgages Payable	<u>\$ 478,000</u>

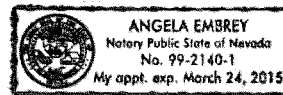
AFFIDAVIT

I, Jennifer Anna Dorsey, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

August 31, 2012  
(DATE)

  
(NAME)

  
(NOTARY)



**KEMP, JONES & COULTHARD**  
ATTORNEYS AT LAW

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January 3, 2013

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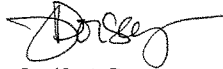
The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire I previously filed in connection with my nomination on September 19, 2012, to be a United States District Judge for the District of Nevada. I certify that the information contained in that document is and remains, to the best of my knowledge, true and accurate.

I also am forwarding an updated Net Worth Statement and Financial Disclosure Report as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Very truly yours,



Jennifer A. Dorsey

cc:  
The Honorable Chuck Grassley  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510



AO 10\*  
Rev. 1/2012

**FINANCIAL DISCLOSURE REPORT  
NOMINATION FILING**

*Report Required by the Ethics  
in Government Act of 1978  
(5 U.S.C. app. §§ 101-111)*

1. Person Reporting (last name, first, middle initial) Dorsey, Jennifer A.	2. Court or Organization US District Court - Nevada	3. Date of Report 01/03/2013
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)  District Judge	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination      Date 01/03/2013 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period  01/01/2012 to 12/31/2012
7. Chambers or Office Address  3800 Howard Hughes Parkway, 17th Floor Las Vegas, Nevada 89169		
<p align="center"><b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Insert signature on last page.</p>		

**I. POSITIONS.** (Reporting individual only; see pp. 9-13 of filing instructions.)

☐ NONE (No reportable positions.)

<u>POSITION</u>	<u>NAME OF ORGANIZATION/ENTITY</u>
1. Equity Partner/Equity Shareholder	Kemp Jones & Coulthard, L.L.P.
2. Trustee	Trust #1
3.	
4.	
5.	

**II. AGREEMENTS.** (Reporting individual only; see pp. 14-16 of filing instructions.)

☐ NONE (No reportable agreements.)

<u>DATE</u>	<u>PARTIES AND TERMS</u>
1. 10/01/2004	Kemp Jones & Coulthard, LLP Limited Liability Partnership Agreement - Equity partner in law firm partnership
2.	
3.	

**FINANCIAL DISCLOSURE REPORT**

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<b>Name of Person Reporting</b>	<b>Date of Report</b>
Dorsey, Jennifer A.	01/03/2013

**III. NON-INVESTMENT INCOME.** (Reporting individual and spouse; see pp. 17-24 of filing instructions.)**A. Filer's Non-Investment Income**☐ NONE (No reportable non-investment income.)

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> (yours, not spouse's)
1. 2012	Kemp Jones & Coulthard, L.L.P./ salary, guaranteed payments, and distributions	\$1,946,350.00
2. 2011	Kemp Jones & Coulthard, L.L.P./salary, guaranteed payments, and distributions	\$1,538,784.36
3.		
4.		

**B. Spouse's Non-Investment Income -** If you were married during any portion of the reporting year, complete this section.

(Dollar amount not required except for honoraria.)

☐ NONE (No reportable non-investment income.)

<u>DATE</u>	<u>SOURCE AND TYPE</u>
1. 2012	Snell & Wilmer L.L.P. - Salary
2.	
3.	
4.	

**IV. REIMBURSEMENTS** -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE (No reportable reimbursements.)

<u>SOURCE</u>	<u>DATES</u>	<u>LOCATION</u>	<u>PURPOSE</u>	<u>ITEMS PAID OR PROVIDED</u>
1. Exempt				
2.				
3.				
4.				
5.				

**FINANCIAL DISCLOSURE REPORT**  
 Page 3 of 19

Name of Person Reporting	Date of Report
Dorsey, Jennifer A.	01/03/2013

**V. GIFTS.** *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*
☐ NONE *(No reportable gifts.)*

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.	Exempt		
2.			
3.			
4.			
5.			

**VI. LIABILITIES.** *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*
☒ NONE *(No reportable liabilities.)*

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.			
2.			
3.			
4.			
5.			

**FINANCIAL DISCLOSURE REPORT**

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<b>Name of Person Reporting</b>	<b>Date of Report</b>
Dorsey, Jennifer A.	01/03/2013

**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)
☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
1. Kemp Jones & Coalthard, LLP Profit Sharing Plan	E	Distribution	N	T	Exempt				
2. Snell & Wilmer Profit Sharing Plan	E	Interest	K	T					
3. Horizon Ridge Professional Park, L.P.	B	Interest	K	W					
4. US Series EE Savings Bonds	A	Interest	J	T					
5. American Funds Bond Fund of America 529	A	Interest	K	T					
6. American Funds Growth Fund of America 529	A	Interest	K	T					
7. American Funds Capital World Bond Fund 529	A	Interest	J	T					
8. American Funds EuroPacific Growth Fund 529	A	Interest	J	T					
9. American Funds New World Fund 529	A	Interest	J	T					
10. American Funds US Gov't Sec Fund 529	A	Interest	J	T					
11. American Funds Fund of America 529	A	Interest	J	T					
12. Trust #1									
13. - Wells Fargo Cash Accounts	A	Interest	L	T					
14. - Greenhaven Continuous Comm. Index Fund	A	Interest							
15. - US Commodity Index Fund	A	Interest							
16. - Powershares DB US Dollar Index Fund	A	Interest							
17. - Morgan Stanley Cash Accounts	A	Interest	N	T					

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 I2 = \$15,001 - \$50,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	J = \$15,000 or less N = \$250,001 - \$500,000 P1 = \$25,000,001 - \$50,000,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = \$5,000,001 - \$50,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	

**FINANCIAL DISCLOSURE REPORT**

Page 5 of 19

<b>Name of Person Reporting</b>	<b>Date of Report</b>
Dorsey, Jennifer A.	01/03/2013

**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)
☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
18. - NAA 2006-AP1 bond	A	Interest	K	T					
19. - Chaseflex Trust 2005-1-A5 bond	A	Interest	K	T					
20. - Banc America FDG 2005-6 bond	A	Interest	J	T					
21. - Legg Mason WA Short Duration Municipal Income Fund	A	Dividend	O	T					
22. - Miami Dade County Special Obligation Municipal Bond (X)	A	Dividend	L	T					
23. - EV High Yield Municipal Bond Fund (X)	A	Dividend	K	T					
24. - Western Asset Municipal Bond High Income Fund (X)	A	Dividend	K	T					
25. - Lord Abbott High Yield Municipal Bond Fund (X)	A	Dividend	K	T					
26. - Mainstay High Yield Municipal Bond Fund (X)	A	Dividend	K	T					
27. - Nuveen High Yield Municipal Bond Fund (X)	A	Dividend	K	T					
28. - Nuveen All-American Municipal Bond Fund (X)	A	Dividend	K	T					
29. - Enterprise Partners stock	A	Interest	K	T					
30. - iShares Barclays 3-7 Year Treasury Fund	A	Dividend	K	T					
31. - ProShares Ultra 7-10 Year Treasury ETF	A	Dividend	K	T					
32. - ProShares Ultra S&P 500 ETF	A	Dividend	K	T					
33. - S&P 500 Index Fund	A	Dividend	J	T					
34. - 3M Company stock	A	Dividend	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less P = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 H2 = More than \$5,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	J = \$15,000 or less N = \$250,001 - \$500,000 P1 = \$25,000,001 - \$50,000,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessed W = Estimated	T = Cash Market	

**FINANCIAL DISCLOSURE REPORT**  
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<b>Name of Person Reporting</b>	<b>Date of Report</b>
Dorsey, Jennifer A.	01/03/2013

**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (Includes those of spouse and dependent children; see pp.34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period					(5) Identity of buyer/seller (if private transaction)
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)		
35. - AmeriGas Partners stock	A	Dividend	J	T						
36. - Amphenol Corp. stock	A	Dividend	J	T						
37. - Apple, Inc. stock	A	Dividend	J	T						
38. - Berkshire Hathaway Class B stock	A	Dividend	J	T						
39. - Casey's General Stores stock	A	Dividend	J	T						
40. - Cognizant Technology Solutions stock (X)	A	Dividend	J	T						
41. - Cohen & Steers Limited Duration stock	A	Dividend	J	T						
42. - ConocoPhillips stock	A	Dividend	J	T						
43. - CVS Caremark Corp stock	A	Dividend	J	T						
44. - Devon Energy stock	A	Dividend	J	T						
45. - Diamond Offshore Drilling stock	A	Dividend	J	T						
46. - Dorman Products stock	A	Dividend	J	T						
47. - Dollar Tree stock (X)	A	Dividend	J	T						
48. - Ecolab, Inc. stock	A	Dividend	J	T						
49. - El Paso Pipeline Partners stock	A	Dividend	J	T						
50. - Enbridge Energy Partners stock	A	Dividend	J	T						
51. - Energy Transfer Equity LP stock	A	Dividend	J	T						

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 H2 = More than \$5,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	J = \$15,000 or less N = \$250,001 - \$500,000 P1 = \$25,000,001 - \$50,000,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	

**FINANCIAL DISCLOSURE REPORT**

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<b>Name of Person Reporting</b>	<b>Date of Report</b>
Dorsey, Jennifer A.	01/03/2013

**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)
☐ **NONE** (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period			D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)	
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)	
52. - Energy Transfer Partners LP stock	A	Dividend	J	T						
53. - EV Energy Partners stock	A	Dividend	J	T						
54. - Express Scripts Holding Co. stock	A	Dividend	J	T						
55. - First Trust Tech AlphaDEX ETF	A	Dividend	J	T						
56. - General Mills Inc. stock	A	Dividend	J	T						
57. - Genesis Energy, LP stock	A	Dividend	J	T						
58. - Google, Inc. stock	A	Dividend	J	T						
59. - Guggenheim Enhanced Short Duration ETF	A	Dividend	J	T						
60. - Guggenheim S&P 500 Equal Weight ETF	A	Dividend	J	T						
61. - Halliburton stock	A	Dividend	J	T						
62. - Intuit Corp stock	A	Dividend	J	T						
63. - iShares Barclays 1-3 Year Treasury Fund stock	A	Dividend	J	T						
64. - iShares Barclays Aggregate Bond Fund	A	Dividend	J	T						
65. - iShares Dow Jones US Real Estate Index Fund	A	Dividend	J	T						
66. - iShares High Dividend Equity Fund	A	Dividend	J	T						
67. - iShares iBoxx High Yield Corporate Fund	A	Dividend	J	T						
68. - iShares iBoxx Investment Grade Corporate Bond Fund	A	Dividend	J	T						

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less P = \$50,001 - \$100,000 J = \$15,001 - \$50,000 N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	
3. Value Method Codes (See Column C2)					

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**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of spouse and dependent children; see pp.34-60 of filing instructions.)
☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
69. - iShares S&P Midcap 400 Index Fund (X)	A	Dividend	K	T					
70. - iShares Dow Jones US Financial Sector Fund (X)	A	Dividend	J	T					
71. - iShares Core S&P Total US Stock Fund (X)	A	Dividend	J	T					
72. - Johnson & Johnson stock	A	Dividend	J	T					
73. - Kellogg Co. stock	A	Dividend	J	T					
74. - Kimberly Clark Corp stock (Y)									
75. - Kinder Morgan Energy Partners, LP stock	A	Dividend	J	T					
76. - Kinder Morgan Management, LLC stock	A	Dividend	J	T					
77. - Lincoln Electric Holdings, Inc. stock	A	Dividend	J	T					
78. - Linn Energy LLC stock	A	Dividend	J	T					
79. - LKQ Corp. stock	A	Dividend	J	T					
80. - Magellan Midstream Partners, LP stock	A	Dividend	J	T					
81. - Markwest Energy Partners	A	Dividend	J	T					
82. - MS StepUp Autocall on Apple, Inc. stock (X)	A	Dividend	J	T					
83. - Mastercard, Inc. stock	A	Dividend	J	T					
84. - Middleby Corp. stock	A	Dividend	J	T					
85. - Monro Muffler & Brake stock	A	Dividend	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 H2 = More than \$5,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$5,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	



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**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)
☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
86. - Nike, Inc. stock	A	Dividend	J	T					
87. - Novo Nordisk A/S stock	A	Dividend	J	T					
88. - Nustar Energy LP stock	A	Dividend	J	T					
89. - Oneok Partners, LP stock	A	Dividend	J	T					
90. - Oracle Corp. stock	A	Dividend	J	T					
91. - PepsiCo, Inc. stock	A	Dividend	J	T					
92. - Perrigo Co. stock	A	Dividend	J	T					
93. - Phillips 66 stock	A	Dividend	J	T					
94. - Plains All American Pipeline, LP stock	A	Dividend	J	T					
95. - Powershares DB Commodity Index Fund	A	Dividend	J	T					
96. - Priceline.com stock	A	Dividend	J	T					
97. - ProShares Ultra Midcap 400 ETF Stock Fund (X)	A	Dividend	K	T					
98. - Powershares DB US Dollar Index Bullish & Bearish Fund	A	Dividend	J	T					
99. - Powershares DB Precious Metals Fund	A	Dividend	J	T					
100. - Regency Energy Partners, LP stock	A	Dividend	J	T					
101. - SPDR S&P Energy ETF	A	Dividend	J	T					
102. - SPDR S&P Pharmaceuticals ETF	A	Dividend	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,001 or less (See Columns C1 and D3)	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value				

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**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)
☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
103. - SPDR Consumer Discretionary Select ETF	A	Dividend	J	T					
104. - SPDR Industrial Select Sector ETF (X)	A	Dividend	J	T					
105. - TJX Companies stock	A	Dividend	J	T					
106. - Tupperware Brands Corp. stock	A	Dividend	J	T					
107. - United Technologies Corp. stock	A	Dividend	J	T					
108. - UBS Securities Autocall on JP Morgan Securities stock(X)	A	Dividend	J	T					
109. - Vanguard Materials ETF (X)	A	Dividend	J	T					
110. - Wells Fargo & Co. stock	A	Dividend	J	T					
111. - Williams Partners, Ltd. stock	A	Dividend	J	T					
112. - WMS Industries stock		None	J	T					
113. - Xylem, Inc. stock (Y)									
114. - AES Corporation bond	A	Interest	J	T					
115. - Alabama Power Co. bond	A	Interest	J	T					
116. - Alliant Techsystems, Inc. bond	A	Interest	J	T					
117. - American West Airlines SER 00-G bond	A	Interest	J	T					
118. - Amerigas Partners, LP bond	A	Interest	J	T					
119. - Apache Corp. bond	A	Interest	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P1 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 I2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
2. Value Codes: (See Columns C1 and D3)					
3. Value Method Codes: (See Column C2)	Q = Appraisal U = Book Value				

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**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)
☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
120. - Arch Coal, Inc. bond	A	Interest	J	T					
121. - AT&T Inc. bond	A	Interest	J	T					
122. - Avis Budget Car Rental, LLC bond	A	Interest	J	T					
123. - Bank of America Corp. bond	A	Interest	J	T					
124. - BE Aerospace, Inc.	A	Interest	J	T					
125. - Beckton Dickinson bond	A	Interest	J	T					
126. - Caterpillar, Inc. bond	A	Interest	J	T					
127. - CCO Holdings, LLC bond	A	Interest	J	T					
128. - Centurylink, Inc. bond	A	Interest	J	T					
129. - Chesapeake Energy Corp. bond	A	Interest	J	T					
130. - Cisco Systems, Inc. bond	A	Interest	J	T					
131. - Citigroup, Inc. bond	A	Interest	J	T					
132. - Continental Airlines 2010-A bond	A	Interest	J	T					
133. - Cott Beverages, Inc. bond	A	Interest	J	T					
134. - Danaher Corp. bond	A	Interest	J	T					
135. - Davita, Inc. bond	A	Interest	J	T					
136. - Delta Airlines 2010 bond	A	Interest	J	T					

1. Income Gain Codes (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,201 - \$2,500 G = \$120,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$55,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)					
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value				

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**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (Includes those of spouse and dependent children; see pp.34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
137. - Denbury Resources, Inc. corporate bond	A	Interest	J	T					
138. - Dover Corp. bond	A	Interest	J	T					
139. - Duke Energy Carolinas bond	A	Interest	J	T					
140. - Ferrell Gas, LP bond	A	Interest	J	T					
141. - Ford Motor Credit bond	A	Interest	J	T					
142. - Forest Oil Corp. bond	A	Interest	J	T					
143. - Frontier Communications Corp. bond	A	Interest	J	T					
144. - General Dynamics Corp. bond	A	Interest	J	T					
145. - General Electric Cap Corp. bond	A	Interest	J	T					
146. - Graphic Packaging International bond	A	Interest	J	T					
147. - HCA Holdings, Inc. bond	A	Interest	J	T					
148. - Healthsouth Corporation bond	A	Interest	J	T					
149. - Hertz Corporation bond	A	Interest	J	T					
150. - Hewlett Packard Co. bond	A	Interest	J	T					
151. - Huntsman International, LLC bond	A	Interest	J	T					
152. - International Lease Finance Corp. bond	A	Interest	J	T					
153. - Iron Mountain, Inc. bond	A	Interest	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P1 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$100,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
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<b>Name of Person Reporting</b>	<b>Date of Report</b>
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**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)
☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
154. - JP Morgan Chase & Co. bond	A	Interest	J	T					
155. - L-3 Communications bond	A	Interest	J	T					
156. - Lamar Media Corp. bond	A	Interest	J	T					
157. - Mediacom LLC bond	A	Interest	J	T					
158. - Medtronic, Inc bond	A	Interest	J	T					
159. - Merck & Co. bond	A	Interest	J	T					
160. - Morgan Stanley corporate bond	A	Interest	J	T					
161. - Peabody Energy Corporation bond	A	Interest	J	T					
162. - Pepsico, Inc. bond	A	Interest	J	T					
163. - PerkinElmer, Inc. bond	A	Interest	J	T					
164. - PNC Funding Corp. bond	A	Interest	J	T					
165. - Polymer Group, Inc. bond	A	Interest	J	T					
166. - Praxair, Inc. bond	A	Interest	J	T					
167. - Public Service Company of Colorado bond	A	Interest	J	T					
168. - Range Resources Corp. bond	A	Interest	J	T					
169. - Raytheon Company bond	A	Interest	J	T					
170. - RR Donnelly & Sons Company bond	A	Interest	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 H2 = More than \$5,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	J = \$15,000 or less N = \$250,001 - \$500,000 P1 = \$25,000,001 - \$50,000,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P2 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	

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**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)
☐ **NONE** (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
171. - SPX Corporation bond	A	Interest	J	T					
172. - Suburban Propane Partners bond	A	Interest	J	T					
173. - Teekay Corp. bond	A	Interest	J	T					
174. - Tenneco, Inc. bond	A	Interest	J	T					
175. - ThermoFisher Scientific bond	A	Interest	J	T					
176. - Time Warner Cable, Inc. bond	A	Interest	J	T					
177. - Transdigm, Inc. bond	A	Interest	J	T					
178. - US Bancorp bond	A	Interest	J	T					
179. - Verizon Communications bond	A	Interest	J	T					
180. - Wal-Mart Stores bond	A	Interest	J	T					
181. - Weatherford International bond	A	Interest	J	T					
182. - Wells Fargo & Co. bond	A	Interest	J	T					
183. - JP Morgan Chase Reverse Convertible Option (Y)									
184. - Morgan Stanley Step Up Note (Y)									
185. - Agrium, Inc. stock (Y)									
186. - Altria Group, Inc. stock (Y)									
187. - American Capital Agency stock (Y)									

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P1 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)					
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value				

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**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)
☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
188. - Briggs & Stratton stock (Y)									
189. - Bristol Myers Squibb stock (Y)									
190. - Cenovus Energy stock (Y)									
191. - CenturyLink stock (Y)									
192. - Chevron Corp. stock (Y)									
193. - Cisco Systems stock (Y)									
194. - Coca Cola stock (Y)									
195. - Ingersoll Rand PLC stock (Y)									
196. - Intel Corp. stock (Y)									
197. - JP Morgan Chase & Co. stock (Y)									
198. - JP Morgan Chase Capital XVI Alerian MLP Index ETN (Y)									
199. - DuPont El De Nemours stock (Y)									
200. - General Electric stock (Y)									
201. - Kraft Foods stock (Y)									
202. - Life Technologies Corp. stock (Y)									
203. - Materion Corp. stock (Y)									
204. - McDonalds Corp. stock (Y)									

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 H2 = More than \$5,000,000	E = \$15,001 - \$50,000
2. Value Codes: (See Columns C1 and D3)	J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$5,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	
3. Value Method Codes: (See Column C2)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	

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**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-69 of filing instructions.)
☐ **NONE** (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
205. - Merck & Co. stock (Y)									
206. - NCR Corp. stock (Y)									
207. - Newcor Corp. stock (Y)									
208. - Pall Corp. stock (Y)									
209. - Phillip Morris International, Inc. stock (Y)									
210. - Procter & Gamble stock (Y)									
211. - Royal Dutch Shell PLC stock (Y)									
212. - Schlumberger, Ltd. stock (Y)									
213. - Seadrill, Ltd. stock (Y)									
214. - Siemens Aktiengesellschaft stock (Y)									
215. - Southern Copper Corp. stock (Y)									
216. - SPDR S&D Dividend ETF (Y)									
217. - Suncor Energy, Inc. stock (Y)									
218. - Terex Corp. stock (Y)									
219. - Teva Pharmaceuticals stock (Y)									
220. - Texas Instruments stock (Y)									
221. - The Scotts Miracle-Gro Company stock (Y)									

1. Income Gain Codes: (See Columns B) and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,001 or less N = \$250,001 - \$500,000 P1 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessed W = Estimated	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$55,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
2. Value Codes: (See Columns C) and D3)					
3. Value Method Codes: (See Column C2)	Q = Appraisal U = Book Value				



**FINANCIAL DISCLOSURE REPORT**  
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<b>Name of Person Reporting</b>	<b>Date of Report</b>
Dorsey, Jennifer A.	01/03/2013

**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
222. - Utilities Select SDPR ETF (Y)									
223. - Valmont Industries stock (Y)									
224. - United Rentals bond (Y)									

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
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**FINANCIAL DISCLOSURE REPORT**  
Page 18 of 19

Name of Person Reporting	Date of Report
Dorsey, Jennifer A.	01/03/2013

**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.** *(Indicate part of report.)*

Part VII, line 1: income was from both interest and distribution.

**FINANCIAL DISCLOSURE REPORT**

Page 19 of 19

Name of Person Reporting	Date of Report
Dorsey, Jennifer A.	01/03/2013

**IX. CERTIFICATION.**

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: *s/ Jennifer A. Dorsey*

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
Suite 2-301  
One Columbus Circle, N.E.  
Washington, D.C. 20544

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		499	420	Notes payable to banks-secured			
U.S. Government securities – Series EE			846	Notes payable to banks-unsecured			
Listed securities – see schedule	1	774	819	Notes payable to relatives			
Unlisted securities – see schedule		30	000	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – see schedule		476	458
Real estate owned – see schedule	1	370	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		70	000				
Cash value-life insurance							
Other assets itemize:							
Municipal bonds		50	579				
Law Firm Profit Sharing Plans		380	458				
				Total liabilities		476	458
				Net Worth	3	699	664
Total Assets	4	176	122	Total liabilities and net worth	4	176	122
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

## FINANCIAL STATEMENT

## NET WORTH SCHEDULES

<u>Listed Securities</u>	
3M Company stock	\$ 3,713
AmeriGas Partners stock	2,047
Amphenol Corp. stock	6,013
Apple, Inc. stock	7,710
Berkshire Hathaway Class B stock	4,941
Casey's General Stores, Inc. stock	5,475
Cognizant Technology Solutions Corp. stock	3,995
Cohen & Steers Limited Duration closed-end stock	10,004
ConocoPhillips stock	4,664
CVS Caremark Corp. stock	6,134
Devon Energy Corp. stock	3,402
Diamond Offshore Drilling, Inc. stock	4,747
Dollar Tree stock	4,126
Dorman Products, Inc. stock	5,917
Ecolab, Inc. stock	3,524
El Paso Pipeline Partners, LP stock	5,892
Enbridge Energy Partners, LP stock	3,632
Energy Transfer Equity LP stock	11,033
Energy Transfer Partners, LP stock	5,859
Enterprise Products Partners, LP stock	29,942
EV Energy Partners LP stock	3,081
Express Scripts Holding Co. stock	3,044
First Trust Tech AlphaDEX Fund (ETF)	3,178
General Mills Inc. stock	831
Genesis Energy, LP stock	6,910
Google, Inc. stock	7,157
Guggenheim Enhanced Short Duration Bond ETF	2,506
Guggenheim S&P 500 Equal Weight ETF	5,431
Halliburton Co. stock	3,333
Intuit, Inc. stock	3,660
iShares Barclays 1-3 Year Treasury Bond Fund	7,431
iShares Barclays 3-7 Year Treasury Bond Fund	33,672
iShares Barclays Aggregate Bond Fund	10,002
iShares Dow Jones U.S. Real Estate Index Fund	4,167
iShares High Dividend Equity Fund	7,649
iShares iBoxx \$ High Yield Corporate Bond Fund	5,053
iShares iBoxx Investment Grade Corporate Bond Fund	8,102
iShares S&P Midcap 400 Index Fund	41,342
iShares Dow Jones US Financial Sector Fund	5,191
iShares Core S&P Total US Stock Fund	5,146
Johnson & Johnson stock	2,839

Kellogg Co. stock	2,278
Kinder Morgan Energy Partners, LP stock	13,023
Kinder Morgan Management, LLC stock	6,258
Lincoln Electric Holdings Inc. stock	3,350
Linn Energy LLC stock	8,346
LKQ Corp. stock	4,966
Magellan Midstream Partners, LP stock	8,450
Markwest Energy Partners, LP stock	9,675
Mastercard, Inc. stock	5,832
MS StepUp Autocall on Apple, Inc. stock	13,163
Middleby Corp. stock	7,102
Monro Muffler & Brake stock	3,841
Nike, Inc. stock	2,442
Novo Nordisk A/S (ADR)	7,585
Nustar Energy LP stock	3,500
Oneok Partners, LP stock	5,978
Oracle Corp. stock	5,961
Pepsico, Inc. stock	6,321
Perrigo Co. stock	6,208
Phillips 66 stock	4,282
Plains All American Pipeline, LP stock	12,742
Powershares DB Commodity Index Tracking Fund	3,224
Priceline.com Inc new stock	4,306
ProShares Ultra MidCap 400 ETF	18,325
ProShares Ultra 7-10 Year Treasury ETF	24,143
ProShares Ultra S&P 500 ETF	19,419
PowerShares DB US Dollar Index Bullish & Bearish Fund	2,501
PowerShares DB Precious Metals Fund	2,046
Regency Energy Partners, LP stock	4,684
S&P 500 Index (ETF)	7,191
SPDR S&P Energy (ETF)	4,011
SPDR S&P Pharmaceuticals (ETF)	4,735
SPDR Consumer Discretionary Select (ETF)	2,565
SPDR Industrial Select Sector (ETF)	4,197
TJX Companies, Inc. stock	3,904
Tupperware Brands Corp. stock	4,591
United Technologies Corp. stock	4,802
UBS Autocall on JP Morgan Securities stock	10,000
Vanguard Materials (ETF)	4,090
Wells Fargo & Co. stock	4,785
Williams Partners, Ltd stock	5,002
WMS Industries Inc. stock	2,594
American Funds Bond Fund of America -529C	17,907
American Funds Capital World Bond Fund -529C	9,547
American Funds EuroPacific Growth Fund -529C	10,364
American Funds Growth Fund of America -529C	36,617

American Funds New World Fund -529C	9,712
American Funds US Gov't Sec Fund -529C	10,010
American Funds Fund of America -529C	13,931
Legg Mason WA Short Duration Municipal Income Fund	500,962
EV High Yield Municipal Income Fund	39,691
Western Asset Municipal Bond High Income Fund	45,291
Lord Abbott High Yield Municipal Bond Fund	45,610
Mainstay High Yield Municipal Bond Fund	47,462
Nuveen High Yield Municipal Bond Fund	48,527
Nuveen All-American Municipal Bond Fund	15,456
AES Corporation corporate bond	3,480
Alabama Power Co. corporate bond	5,606
Alliant Techsystems, Inc. corporate bond	3,278
American West Airlines SER 00-G corporate bond	2,380
Amerigas Partners, LP corporate bond	3,218
Apache Corp. corporate bond	5,458
Arch Coal, Inc. corporate bond	2,760
AT&T Inc. corporate bonds	11,376
Avis Budget Car Rental, LLC corporate bond	3,368
Banc America Large Loan Trust FDG 2005-6 2-A-9	3,735
Bank of America Corp. corporate bond	5,679
BE Aerospace, Inc. corporate bond	3,341
Beckton Dickinson corporate bond	5,383
Caterpillar, Inc. corporate bond	5,607
CCO Holdings, LLC/CAP Corp. corporate bond	3,233
Centurylink, Inc. corporate bond	3,151
Chaseflex Trust 2005-1 1-A5 corporate bond	25,749
Chesapeake Energy Corp. corporate bond	3,233
Cisco Systems, Inc. corporate bond	5,816
Citigroup, Inc. corporate bond	5,896
Continental Airlines 2010-A corporate bond	5,189
Cott Beverages, Inc. corporate bond	3,308
Danaher Corp. corporate bond	5,603
Davita, Inc. corporate bond	3,266
Delta Airlines 2010-2A corporate bond	4,738
Denbury Resources Inc. corporate bond	3,323
Dover Corp. corporate bond	5,781
Duke Energy Carolinas corporate bond	5,631
Ferrell Gas, LP/Ferrellgas Finance corporate bond	3,240
Ford Motor Credit corporate bond	3,833
Forest Oil Corp. corporate bond	3,015
Frontier Communications Corp. corporate bond	3,525
General Dynamics Corp. corporate bond	5,627
General Electric Cap Corp. corporate bond	5,578
Graphic Packaging International, Inc. corporate bond	3,315
HCA Holdings, Inc. corporate bond	3,443

Healthsouth Corporation corporate bond	3,323
Hertz Corporation corporate bond	3,300
Hewlett Packard Co. corporate bond	4,859
Huntsman International, LLC corporate bond	3,413
International Lease Finance Corp. corporate bonds	9,340
Iron Mountain, Inc. corporate bond	3,060
JP Morgan Chase & Co. corporate bond	5,588
L-3 Communications Corp. corporate bond	5,628
Lamar Media Corp. corporate bond	3,255
Mediacom LLC/Mediacom Capital Corp. corporate bond	3,323
Medtronic, Inc. corporate bond	5,698
Merck & Co., Inc. corporate bond	5,629
Morgan Stanley corporate bond	5,609
NAA 2006-AP1 A2 corporate bond	16,776
Peabody Energy Corporation corporate bond	3,233
Pepsico, Inc. corporate bond	5,311
Perkinelmer, Inc. corporate bond	11,121
PNC Funding Corp. corporate bond	5,720
Polymer Group, Inc. corporate bond	3,225
Praxair, Inc. corporate bond	5,658
Public Service Company of Colorado corporate bond	5,464
Range Resources Corp. corporate bond	3,143
Raytheon Company corporate bond	5,739
RR Donnelley & Sons Company corporate bond	2,035
SPX Corporation corporate bond	3,353
Suburban Propane Partners corporate bond	3,248
Teekay Corp. corporate bond	3,158
Tenneco, Inc. corporate bond	3,251
Thermo Fisher Scientific corporate bond	5,667
Time Warner Cable, Inc. corporate bond	5,450
Transdigm, Inc. corporate bond	3,323
US Bancorp corporate bond	10,751
Verizon Communications corporate bond	5,855
Wal-Mart Stores corporate bond	5,575
Weatherford International corporate bond	5,450
Wells Fargo & Co. corporate bond	5,746
Total Listed Securities	<u>\$ 1,774,819</u>

Municipal Bonds

Miami Dade County Special Obligation Municipal Bond	<u>\$ 50,579</u>
Total Municipal Bonds	<u>\$ 50,579</u>



Unlisted Securities

Horizon Ridge Professional Park LP	\$ 30,000
Total Unlisted Securities	<u>\$ 30,000</u>

Real Estate Owned

Personal residence	\$ 620,000
Vacation home	<u>750,000</u>
Total Real Estate Owned	<u>\$ 1,370,000</u>

Real Estate Mortgages Payable

Personal residence	\$ 393,458
Family residence	<u>83,000</u>
Total Real Estate Mortgages Payable	<u>\$ 476,458</u>

Senator HIRONO. Mr. Chen.

**STATEMENT OF RAYMOND T. CHEN, NOMINEE TO BE CIRCUIT  
JUDGE FOR THE FEDERAL CIRCUIT**

Mr. CHEN. Thank you Chairwoman Hirono. First I want to thank the President for this honor of the nomination. I want to thank the Committee for scheduling this hearing. Thank you for chairing this hearing today.

I also want to thank those that submitted letters of support. I do not have a personal statement, but I would like to introduce the family that is here with me today.

First my wife, Lisa Hsiao, who is a Trial Attorney in the Department of Justice Consumer Protection Branch. Also with us are our kids, Maya, who is 13 and in eighth grade, and Justin, who is 10 and in fifth grade. My parents Paul Chen and Pejing Chen, who unfortunately could not be here from our hometown in Huntington Beach, California, because of health issues, but I do know that they are watching the Webcast right now.

So I know they are watching with pride and some amazement over what is happening here in Washington, DC today. I wanted to say hello to them and also thank them for all of their love and support.

Although my extended family is out in California, I do have a team of in-laws here with me today, so I better introduce them now. I will try to go fast. First, my father-in-law, Henry Hsiao; mother-in-law, Linda Hsiao; uncle, Doug Lee; aunt, Sandy Lee Kiwano; uncle, Arn Kiwano; grandmother-in-law, Marie Lee; sister-in-law, Beverly Hsiao Blume; her son, James. I think back there is also cousin-in-law, James Hsiao, who works with me at the Patent and Trademark Office.

Aside from that, there are several friends and colleagues from the Patent and Trademark Office who came over here from the other side of the river, including General Counsel Bernie Knight, and I thank them for coming and supporting me here today. And then I have several other friends that have come, and I particularly want to thank my old high school friend, LeAnn Shimabukuro, for coming today.

Thank you and I look forward to answering the Committee's questions.

[The biographical information of Mr. Chen follows:]

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).  
  
Raymond T. Chen
2. **Position:** State the position for which you have been nominated.  
  
United States Circuit Judge for the Federal Circuit
3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.  
  
United States Patent and Trademark Office  
Office of the Solicitor  
600 Dulany Street  
Alexandria, Virginia 22314  
  
Residence: Bethesda, Maryland
4. **Birthplace:** State year and place of birth.  
  
1968; New York, New York
5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.  
  
1991 – 1994, New York University School of Law; J.D., 1994  
  
1986 – 1990, University of California, Los Angeles; B.S., 1990
6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.  
  
1998 – Present  
United States Patent and Trademark Office

Office of the Solicitor  
600 Dulany Street  
Alexandria, Virginia 22314  
Deputy General Counsel for Intellectual Property Law and Solicitor (2008 – Present)  
Associate Solicitor (1998 – 2008)

1996 – 1998  
United States Court of Appeals for the Federal Circuit  
717 Madison Place, NW  
Washington, DC 20439  
Technical Assistant

Summer 1993, 1994 – 1996  
Knobbe, Martens, Olson & Bear  
2040 Main Street, 14th Floor  
Irvine, California 92614  
Associate (1994 – 1996)  
Summer Associate (Summer 1993)

Summer 1992  
Pretty, Schroeder, Bruggemann & Clark (now dissolved)  
444 South Flower Street  
Los Angeles, California 90017  
Summer Associate

1989 – 1991  
Hecker & Harriman (now Hecker Law Group)  
1925 Century Park East, Suite 2300  
Los Angeles, California 90067  
Scientist

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I am registered for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Attorney of the Year, Office of the Solicitor (2002)

Bronze Medal Award, United States Department of Commerce (2005)

Eta Kappa Nu (electrical engineering honor society) (1989 – 1990)

Gold Medal Award, United States Department of Commerce (2011)

Tau Beta Pi (engineering honor society) (1989 – Present)

United Technologies Scholarship (1986 – 1990)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Advisory Council for the U.S. Court of Appeals for the Federal Circuit (2011 – Present)

American Intellectual Property Law Association (1994 – 1997)

Asian Pacific American Bar Association, Washington, DC Chapter (2012 – Present)

Federal Circuit Bar Association (2007 – Present)

Patent and Trademark Office Committee (2009 – 2011)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

California, 1994 (inactive since January 1, 1998)

District of Columbia, 1997

There have been no lapses in membership, although as indicated, my membership in California is inactive.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States, 2009

District of Columbia Court of Appeals, 1997

Supreme Court of California, 1994

United States Patent and Trademark Office, 1996 (inactive)

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Elementary School Parent Teacher Association (2005 – Present)

Middle School Parent Teacher Association (2010 – Present)

Mohican Swimming Pool Association (2006 – Present)

U.S. Patent and Trademark Office Asian Pacific American Network  
Executive Advisor (2011 – Present)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of these organizations listed above currently discriminates or previously discriminated on the basis of race, sex, religion, or national origin, either through formal membership requirements or through the practical implementation of membership policies.

12. **Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

*The Broad Discretion of Arbitrators to Award Remedies: the Intel Decision*, 1 Computer and Telecommunications Law Review 129 (1995). Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the

name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

Privacy Impact Assessment, United States Patent and Trademark Office, February 24, 2010. Copy supplied.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

In 2002, I participated as an observer for the United States Patent and Trademark Office at a series of joint hearings held by the Federal Trade Commission and Department of Justice on the intersection between competition law and intellectual property law and policy. I was not a presenter but occasionally offered oral comments to clarify the USPTO's perspectives and practices, particularly when I thought that presenters misunderstood the USPTO position. I have no notes, transcript, or recording from these hearings. A copy of the Federal Trade Commission's final report is supplied.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

November 16, 2012: Moderator for panel on "Patent Law: Perspectives from the Bench," at the National Asian Pacific American Bar Association (NAPABA) 2012 Annual Convention, held in Washington, DC. Outline supplied.

October 11-12, 2012: Member of three panels discussing litigation issues arising from the recently-enacted America Invents Act at the 13th Annual Sedona Conference on Patent Litigation, held in Del Mar, California. My comments during the panel discussions addressed the new post-grant opposition procedures available at the Patent Office, and claim construction. Notes supplied.

September 24, 2012: Luncheon address at a patent law conference sponsored by Knobbe, Martens, Olson & Bear in Palo Alto, California. My talk concerned the Patent Office's efforts to implement various elements of the America Invents Act, including establishing a new satellite office in Silicon Valley. I also was a member of a panel on "Dealing Strategically with the America Invents Act." Luncheon address notes supplied.

September 19, 2012: Member of panel previewing important intellectual property litigation cases to be addressed in the coming year, held at Catholic University School of Law in Washington, DC. I presented a summary of the *Already v. Nike* case, which was pending at the Supreme Court. A webcast video of the panel is available at <http://video.law.edu/patentlitigation.cfm>.

July 27, 2012: Member of a panel on “Multiple Systems for Challenging Validity: Roles of USPTO and Courts,” at the 2012 High Technology Protection Summit, Center for Advanced Study & Research on Intellectual Property (CASRIP), held at University of Washington School of Law in Seattle, Washington. PowerPoint presentation supplied.

May 30, 2012: Mock appellate argument before a panel of Federal Circuit judges, co-sponsored by the Federal Circuit Bar Association and China Law Society, held at Renmin University in Beijing, China. The mock argument was designed to educate Chinese patent lawyers and judges from the intellectual property division of the Supreme People’s Court about oral argument at the Federal Circuit. I have no notes, transcript, or recording. The address of the Federal Circuit Bar Association is 1620 I Street, NW, Suite 801, Washington, DC 20006.

May 21, 2012: Member of a panel on “The PTO/District Court Interface,” at the Patent Institutions Summit, held at Stanford Law School in Palo Alto, California. A webcast video of the panel is available at <http://www.youtube.com/watch?v=KnipvEXdiIM>.

May 18, 2012: Member of a panel on recent developments on patent law in the United States and Germany at the 2012 German-U.S. Bench & Bar Conference, sponsored by the Federal Circuit Bar Association, held in Washington, DC. I have no notes, transcript, or recording. The address of the Federal Circuit Bar Association is 1620 I Street, NW, Suite 801, Washington, DC 20006.

April 27, 2012: Member of a panel on “Judicial Oversight in Patents and Antitrust,” held at Duke University School of Law in Durham, North Carolina. The panel focused on the institutional relationship between the Federal Circuit and the Patent Office. I have no notes, transcript, or recording. The address of Duke University School of Law is 210 Science Drive, Box 90362, Durham, NC 27708.

April 18, 2012: Luncheon address at the Austin Intellectual Property Law Association, held in Austin, Texas. My talk addressed the Patent Office’s efforts to implement various aspects of the America Invents Act and provide guidance on handling patent-eligibility issues. I have no notes, transcript, or recording. The Association does not have a physical address.

April 17, 2012: Member of a panel discussing the patentability of medical diagnostic methods, sponsored by the Biotechnology Industry Organization



(BIO), held in Austin, Texas. I discussed the Supreme Court's opinion in *Mayo Collaborative Servs. v. Prometheus Labs, Inc.* I have no notes, transcript, or recording. The address of BIO is 1201 Maryland Avenue, SW, Washington, DC 20024.

March 23, 2012: Member of a panel at a CLE event about the impact of the America Invents Act on patent litigation, sponsored by the New York Intellectual Property Law Association (NYIPLA), held in New York, New York. I discussed the interaction between the Patent Office's new post-grant opposition procedures and district court patent infringement litigation. I have no notes, transcript, or recording. NYIPLA's address is 2125 Center Avenue, Suite 406, Fort Lee, NJ 07024.

March 9, 2012: Member of a panel on "Interpreting and Implementing the America Invents Act and Considering Related Ethical Issues," at the Ninth Annual Intellectual Property Law Seminar, Institute of Intellectual Property & Social Justice, Howard University School of Law, held in Washington, DC. I discussed the inequitable conduct doctrine and the new supplemental examination procedure provided by the America Invents Act, and gave a short summary on the state of the Patent Office. I have no notes, transcript, or recording, but press coverage is provided. Howard University School of Law's address is 2900 Van Ness Street, NW, Washington, DC 20008.

February 24, 2012: Member of a panel at a CLE event about Section 101 of the Patent Act and patent-eligible subject matter, sponsored by Suffolk University Law School, held in Boston, Massachusetts. I discussed recent relevant case law and the Patent Office's guidelines on patent-eligibility. I have no notes, transcript, or recording. Suffolk University Law School's address is 120 Tremont Street, Boston, MA 02108.

January 19, 2012: Member of a panel discussing Section 101 of the Patent Act and patent-eligible subject matter, sponsored by the Advanced Patent Law Institute, University of Texas School of Law Office of Continuing Legal Education (UTCLE), held in Alexandria, Virginia. I discussed recent relevant case law and the Patent Office's guidelines on patent-eligibility. I have no notes, transcript, or recording. UTCLE's address is 727 East Dean Keeton Street, Austin, TX 78705.

January 17, 2012: Member of a panel discussing the state of patent litigations in the smartphone market, sponsored by the Internet Caucus Advisory Committee, held in Washington, DC. An audio recording of the panel is available at <http://www.netcaucus.org/conference/2012/patent.shtml>.

November 18, 2011: Member of a panel on important changes in intellectual property law at the National Asian Pacific American Bar Association's

(NAPABA) 2011 Annual Convention, held in Atlanta, Georgia. I discussed various aspects of the America Invents Act. PowerPoint presentation supplied.

October 27, 2011: Mock appellate argument before a panel of Federal Circuit judges, sponsored by the Federal Circuit Bar Association, held in Tokyo, Japan. The mock argument was designed to educate Japanese patent lawyers and judges from the Tokyo Intellectual Property High Court about oral argument at the Federal Circuit. Outline supplied.

October 24, 2011: Presentation to Taiwanese patent examiners and management on U.S. patent law, examination issues, and the role of the Office of the Solicitor in the Patent Office, held at the Taiwan Intellectual Property Office (TIPO) in Taipei, Taiwan. PowerPoint presentation supplied.

October 20, 2011: Member of a panel discussing the Patent Office's views on Sections 101 and 112 of the Patent Act at the 2011 American Intellectual Property Law Association (AIPLA) Annual Meeting, held in Washington, DC. PowerPoint presentation supplied.

October 12, 2011: Luncheon address at the Fifth Annual Symposium on Patent Law and Pharmaceuticals, held at Rutgers Law School. I discussed current trends in patent law. Notes supplied.

September 13, 2011: Member of a panel about the inequitable conduct doctrine in light of the Federal Circuit's *en banc* decision in *Therasense v. Becton Dickinson*, at the Intellectual Property Owners Association (IPO) 2011 Annual Meeting, held in Los Angeles, California. I discussed the Patent Office's position as well as its consideration of an amendment to its regulations. I have no notes, transcript, or recording, but press coverage is provided. IPO's address is 1501 M Street, NW, Washington, DC 20005.

August 16, 2011: Member of a panel about the inequitable conduct doctrine in light of the Federal Circuit's *en banc* decision in *Therasense v. Becton Dickinson*, at the American Intellectual Property Law Association's (AIPLA) Electronics and Computer Patent Law Summit 2011, held in St. Paul, Minnesota. I discussed the Patent Office's position as well as its consideration of an amendment to its regulations. I have no notes, transcript, or recording. AIPLA's address is 241 18th Street South, Suite 700, Arlington, VA 22202.

August 6, 2011: Member of a panel about the patentability of business method patents, at the American Bar Association (ABA) Annual Meeting – Intellectual Property Law Section, held in Toronto, Canada. I discussed the Patent Office's examination guidelines on patent-eligibility. I have no notes, transcript, or recording. The ABA's address is 321 North Clark Street, Chicago, IL 60654.

June 23, 2011: Member of a panel about the role of government and intellectual property in stimulating innovation, at the Federal Circuit Bar Association's 13th Annual Bench & Bar Conference, held in Key Biscayne, Florida. I have no notes, transcript, or recording, but press coverage is provided. The address of the Federal Circuit Bar Association is 1620 I Street, NW, Suite 801, Washington, DC 20006.

May 25, 2011: Member of a panel about the pending legislation that later became the America Invents Act, at a CLE event sponsored by World Research Group, held in New York, New York. PowerPoint presentation supplied.

April 28, 2011: Member of a panel about developments in patent case law, at the 19th Annual Conference, Intellectual Property Law & Policy, Fordham Intellectual Property Law Institute, held in New York, New York. I discussed the Supreme Court's recent decision in *Microsoft v. i4i*, 131 S.Ct. 2238 (2011). I have no notes, transcript, or recording. The address of Fordham Law School is 140 West 62nd Street, New York, NY 10023.

March 11, 2011: Member of a panel about the inequitable conduct doctrine during the pendency of the Federal Circuit's *en banc* decision in *Therasense v. Becton Dickinson*, at the Eighth Annual Intellectual Property Law Seminar, Institute of Intellectual Property & Social Justice, Howard University School of Law, held in Washington, DC. I have no notes, transcript, or recording. Howard University School of Law's address is 2900 Van Ness Street, NW, Washington, DC 20008.

January 27, 2011: Member of a panel about the inequitable conduct doctrine during the pendency of the Federal Circuit's *en banc* decision in *Therasense v. Becton Dickinson*, at the Los Angeles Intellectual Property Law Association (LAIPLA) Washington in the West Conference, held in Los Angeles, California. I have no notes, transcript, or recording. LAIPLA has no physical address.

November 22, 2010: Member of a panel about the PTO's Solicitor's Office and possible careers in intellectual property law in the government, at the University of Maryland School of Law in Baltimore, Maryland. I have no notes, transcript, or recording. The University of Maryland School of Law's address is 500 West Baltimore Street, Baltimore, MD 21201.

November 9, 2010: Member of a panel discussing *Therasense v. Becton Dickinson*, held at Catholic University School of Law in Washington, DC. A webcast of the video is available at <http://video.law.edu/therasense.cfm>.

October 21-22, 2010: Member of two panels about the interaction between reexamination and patent litigation and patentability issues arising from Sections 101 and 112 of the Patent Act, at the 11th Annual Sedona Conference on Patent Litigation, held in Phoenix, Arizona. I have no notes, transcript, or recording.

The address of the Sedona Conference is 5150 North 16th Street, Suite A-215, Phoenix, AZ 85016.

October 6, 2010: Member of a panel about the patent-eligibility of business methods in view of the Supreme Court's decision in *Bilski v. Kappos*, at the International Bar Association 2010 Conference, held in Vancouver, Canada. PowerPoint presentation supplied.

September 23, 2010: Speaker at the USPTO's Business Method Partnership Meeting, discussing the Federal Circuit's case law and the agency's examination guidelines on patent-eligibility, held in Alexandria, Virginia. PowerPoint presentation supplied.

July 23, 2010: Member of a panel about patent-eligibility under Section 101 of the Patent Act, at the 2010 High Technology Protection Summit, Center for Advanced Study & Research on Intellectual Property (CASRIP), held at the University of Washington School of Law, in Seattle, Washington. I discussed the Patent Office's efforts to conform its examination guidelines to follow the Supreme Court's decision in *Bilski v. Kappos*. I have no notes, transcript, or recording. The University of Washington School of Law's address is William H. Gates Hall, Box 353020, Seattle, WA 98195.

June 26, 2010: Member of a panel about patent law's effects on innovation and competition at the Federal Circuit Bar Association's 12th Annual Bench and Bar Conference, held in Colorado Springs, Colorado. I have no notes, transcript, or recording. The address of the Federal Circuit Bar Association is 1620 I Street, NW, Suite 801, Washington, DC 20006.

May 26, 2010: Co-moderator of a panel on "Permanent Injunctions in the District Courts and ITC: Effects on Competition and Innovation," at a joint roundtable conference co-sponsored by the Federal Trade Commission, Department of Justice, Antitrust Division, and the Patent Office, held in Alexandria, Virginia. I have no notes, transcript, or recording, but press coverage of the event is supplied. The address of the U.S. Patent and Trademark Office is 600 Dulany Street, Alexandria, VA 22314.

April 21, 2010: Member of a panel about the then-pending Supreme Court decision in *Bilski v. Kappos*, at the American Bar Association (ABA) Antitrust Law Section Spring Meeting, held in Washington, DC. I presented the agency's perspective on the case. I have no notes, transcript, or recording. The ABA's address is 321 North Clark Street, Chicago, IL 60654.

February 9, 2010: Speaker at the Santa Clara High Tech Law Institute at Santa Clara Law School about recent Patent Office initiatives and litigations. Transcript supplied.

December 7, 2009: Member of a panel about the then-pending Supreme Court decision in *Bilski v. Kappos*, at the Intellectual Property Owners Association (IPO) 20th Annual Conference on USPTO Law and Practice: PTO Day, held in Washington, DC. I presented the agency's perspective about the case. I have no notes, transcript, or recording, but press coverage is supplied. The IPO's address is 1501 M Street, NW, Washington, DC 20005.

November 19, 2009: Member of a panel about the then-pending Supreme Court decision in *Bilski v. Kappos*, at the American University, Washington College of Law, held in Washington, DC. I presented the agency's perspective about the case. A webcast video of the panel is available at <http://www.wcl.american.edu/pijp/go/bilski-nov2009>.

January 29, 2009: Member of a panel about the then-pending Supreme Court decision in *Bilski v. Kappos*, at the Los Angeles Intellectual Property Law Association (LAIPLA) Washington in the West Conference, held in Los Angeles, California. I presented the agency's perspective about the case. I have no notes, transcript, or recording. LAIPLA has no physical address.

January 14, 2009: Member of a panel about abstract patents and Section 101 of the Patent Act, at the Brookings Institution, held in Washington, DC. Transcript supplied.

November 20, 2008: Speaker at the Cardozo School of Law IP Speaker Series on "Recalibrating Perceptions of Patent Eligible Subject Matter," held in New York, New York. Notes supplied.

November 13, 2008: Member of a panel discussing recent Federal Circuit and USPTO Patent Board decisions on patent-eligible subject matter as well as the agency's recent examination guidelines on that same subject, sponsored by the Advanced Patent Law Institute, University of Texas School of Law Office of Continuing Legal Education (UTCLE), held in Alexandria, Virginia. I have no notes, transcript, or recording. UTCLE's address is 727 East Dean Keeton Street, Austin, TX 78705.

October 15, 2008: Speaker at a CLE event about patent-eligible subject matter and Section 101 of the Patent Act, sponsored by the Patent Law Institute, held in San Francisco, California. PowerPoint presentation supplied.

July 29, 2008: Member of a panel at a CLE event about the patentability of business methods in light of *In re Bilski (en banc)*, sponsored by World Research Group, held in New York, New York. I have no notes, transcript, or recording. World Research Group's address is 16 East 40th Street, 5th Floor, New York, NY 10016.

May 22, 2008: Member of a panel at a CLE event about the Federal Circuit *en banc* argument in *In re Bilksi*, sponsored by the Federal Circuit Bar Association, held in Washington, DC. A webcast video of the panel is available at <https://fedcirbar.webex.com/tc05061/trainingcenter/record/downloadViewAction.do?recordId=25072232&siteurl=fedcirbar&actionType=view&setted=102&Rnd=0.5331058738883625>.

March 7, 2008: Presentation on patent-eligible subject matter and Section 101 of the Patent Act at the Fifth Annual Intellectual Property Law Seminar, Institute of Intellectual Property & Social Justice, Howard University School of Law, held in Washington, DC. PowerPoint presentation supplied.

November 29, 2007: Member of a panel about current issues in reexamination proceedings at the Patent Office, at the 8th Annual Advanced Patent Law Institute, University of Texas School of Law Office of Continuing Legal Education, held in San Jose, California. Partial PowerPoint presentation supplied.

November 5, 2007: Member of a panel about Federal Circuit case law developments, at Cardozo School of Law in New York, New York. I have no notes, transcript, or recording. Cardozo School of Law's address is 55 Fifth Avenue, New York, NY 10003.

August 14, 2007: Member of a panel about patent reform issues being considered by Congress, sponsored by the Electronics Industry Alliance, held in Hot Springs, Virginia. I have no notes, transcript, or recording. EIA ceased operations in February 2011 and has no physical address.

March 9, 2006: Presenter on intellectual property litigation and the relationship between appellate and trial courts in the United States, and mock oral argument for judges from countries that comprise the Association of Southeast Asian Nations, sponsored by the U.S. Patent and Trademark Office, held in Bangkok, Thailand. PowerPoint presentations supplied.

July 22, 2005: Member of a panel about patent reform legislation under consideration in Congress, at the 2005 High Technology Protection Summit, Center for Advanced Study & Research on Intellectual Property (CASRIP) University of Washington School of Law, held in Seattle, Washington. I spoke about the proposed post patent grant opposition procedures. PowerPoint presentation supplied.

November 23, 2004: Member of a panel about developments in Federal Circuit case law, at Cardozo School of Law in New York, New York. I have no notes, transcript, or recording. Cardozo School of Law's address is 55 Fifth Avenue, New York, NY 10003.

June 7, 2003: Member of a panel about preliminary injunctions in patent cases at the Los Angeles Intellectual Property Law Association (LAIPLA) Spring Conference, held in La Jolla, California. I also performed a mock oral argument at this event. I have no notes, transcript, or recording. LAIPLA has no physical address.

April 21, 2001: Member of a panel about business method patent examination and litigation, sponsored by the Beverly Hills Bar Association, held in Los Angeles, California. I have no notes, transcript, or recording. The Association has no physical address.

May 18, 2000: Member of a panel discussing litigation and examination issues relating to means-plus-function claiming and 35 U.S.C. Section 112, paragraph 6, at the American Intellectual Property Law Association (AIPLA) Spring Conference, held in Pittsburgh, Pennsylvania. I have no notes, transcript, or recording. AIPLA's address is 241 18th Street South, Suite 700, Arlington, VA 22202.

March 29, 2000: Member of a panel at a CLE event about business method patents and the Patent Office's recent examination guidelines on means-plus-function claims, sponsored by the San Francisco Intellectual Property Law Association, held in San Francisco, California. I have no notes, transcript, or recording. The Association's address is 237 Kearny Street, #123, San Francisco, CA 94108.

Teaching: In July 2001, 2002, and 2004 to 2007, I taught "Advanced Patentability Issues" at the Summer Institute for the Center for Advanced Study & Research on Intellectual Property, at the University of Washington School of Law. The course each time comprised two two-hour lectures covering numerous patentability issues. A PowerPoint presentation, which did not substantially change over the years, is supplied.

Guest Lectures: I have served as a guest lecturer about five times over the last 10 years in the patent law class that Chief Judge Rader and former Solicitor John Whealan teach at George Washington University Law School. The subjects I covered in these lectures included novelty, obviousness, and patent prosecution procedure. I have no notes, transcript, or recording. The address of the George Washington School of Law is 2000 H Street, NW, Washington, DC 20052.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Gene Quinn, *Interview Finale: USPTO Attorneys Knight and Ray*, [www.ipwatchdog.com](http://www.ipwatchdog.com), September 29, 2012. Copy supplied.

Gene Quinn, *Exclusive Interview: USPTO Attorneys Bernie Knight and Ray Chen*, [www.ipwatchdog.com](http://www.ipwatchdog.com), September 27, 2012. Copy supplied.

Dolly Y. Wu & Steven M. Geiszler, *Patentable Subject Matter: What is the Matter with Matter?*, 15 Va. J.L. & Tech. 101 (2010). Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held any judicial office.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? \_\_\_\_\_

- i. Of these, approximately what percent were:

jury trials:	_____ %
bench trials:	_____ % [total 100%]
civil proceedings:	_____ %
criminal proceedings:	_____ % [total 100%]

- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.



- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
  - h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
  - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:
- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
  - b. a brief description of the asserted conflict of interest or other ground for recusal;
  - c. the procedure you followed in determining whether or not to recuse yourself;
  - d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I have not held any judicial office.

15. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held any public office. I have not had any unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever

held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have not held office in or rendered services to any political party or election committee. I have not held a position or played a role in any political campaign.

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I have not served as a clerk to a judge.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced law alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1994 – 1996  
Knobbe, Martens, Olson & Bear  
2040 Main Street, 14th Floor  
Irvine, CA 92614  
Associate

1996 – 1998  
United States Court of Appeals for the Federal Circuit  
717 Madison Place, NW  
Washington, DC 20439  
Technical Assistant

1998 – Present  
United States Patent and Trademark Office  
600 Dulany Street  
Alexandria, VA 22314  
Deputy General Counsel for Intellectual Property Law and Solicitor (2008 – Present)  
Associate Solicitor (1998 – 2008)

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have never served as an arbitrator or mediator in alternative dispute resolution proceedings.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

My practice has been focused on intellectual property law, with a primary emphasis on patent appellate litigation.

In my first two years of practice, as an associate at Knobbe, Martens, Olson & Bear from 1994 to 1996, I drafted a number of district court briefs and legal memoranda on specific patent and trademark issues. In addition, I drafted several patent applications spanning various technologies, as well as amendments and responses to actions from the Patent Office.

In 1996, I moved to Washington and joined the Senior Technical Assistant's Office at the Federal Circuit as one of three technical assistants. I researched and wrote memoranda commenting on drafts of court opinions for both legal and technical accuracy as well as identification of conflicting legal precedent. I also performed legal research and writing for individual judges occasionally.

From 1998 to 2008, I served as an Associate Solicitor in the Office of the Solicitor at the United States Patent and Trademark Office. During that time, I was first or second chair on several dozen Federal Circuit briefs defending the agency's patent and trademark decisions, and presented approximately 20 arguments in the Federal Circuit. I also regularly appeared in district court defending the agency against lawsuits brought under the Administrative Procedure Act. In addition, I was a legal advisor on several patent policy and legal issues within the agency. Another aspect of my duties was occasionally prosecuting patent attorneys, who were members of the agency's patent bar, in administrative proceedings for violating the agency's code of professional responsibility.

Since 2008, when I was selected to become the Deputy General Counsel of Intellectual Property Law and Solicitor, I have been supervising the litigation work of the other lawyers in the Solicitor's Office, and have presented oral arguments less frequently. Besides editing briefs and assisting others in formulating strategy and arguments, I deal with higher

level patent and trademark policy issues within the agency. I also coordinate and participate in discussions with lawyers from other parts of the government in determining what positions the United States should take as an *amicus* in intellectual property cases before both the Supreme Court and the Federal Circuit. Furthermore, I am responsible for the review and clearance of all new regulations and amendments to existing regulations for the Office of the Solicitor.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

During my two years as an associate at Knobbe, Martens, Olson & Bear from 1994 to 1996, I did patent work for a wide array of clients from fields including computer software, computer hardware, semiconductor devices, medical devices, and mechanical and electro-mechanical inventions. In the trademark area, I represented clients in the furniture and clothing industries.

Since I joined the United States Patent and Trademark Office in 1998, my client has been the agency and the United States.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

In my first two years of practice, as an associate at a law firm, about 50% of my work was litigation, drafting pleadings, developing theories and researching issues. I did not appear in court.

At the United States Patent and Trademark Office, my work has been 70-75% litigation, primarily in the Federal Circuit. A small percentage of my litigation work has been directed to disciplinary proceedings before an administrative law judge.

- i. Indicate the percentage of your practice in:

- 1. federal courts: 95%
- 2. state courts of record: 0%
- 3. other courts: 0%
- 4. administrative agencies: 5%

- ii. Indicate the percentage of your practice in:

- 1. civil proceedings: 100%
- 2. criminal proceedings: 0%

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather

than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I served as chief counsel in one disciplinary trial before an administrative law judge that went to verdict. I was co-counsel in one civil action in which both sides introduced evidence, and prevailed on summary judgment. Although Administrative Procedure Act (APA) cases are usually based on solely the administrative record and do not go to trial, I have prevailed in numerous APA cases on summary judgment, as either chief counsel or associate counsel.

- i. What percentage of these trials were:
  1. jury: 0%
  2. non-jury: 100%
- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, *amicus* or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

As an Associate Solicitor of the Patent Office from 1998 to 2008, and Solicitor from 2008 to present, I have had significant involvement in formulating the United States' views in the following intellectual property cases:

*Retractable Technologies, Inc., et al. v. Becton, Dickinson and Company*, No. 11-1154 (cert. denied). Brief for the United States as *amicus curiae*, at the Court's invitation, suggesting denial, <http://www.justice.gov/osg/briefs/2012/2pet/6invit/2011-1154.pet.ami.inv.pdf>.

*GlaxoSmithKline v. Classen Immunotherapies, Inc.*, No. 11-1078 (cert. denied). Brief for the United States as *amicus curiae*, at the Court's invitation, suggesting denial, <http://www.justice.gov/osg/briefs/2012/2pet/6invit/2011-1078.pet.ami.inv.pdf>.

*Already LLC v. Nike, Inc.*, No. 11-982, 568 U.S. \_\_\_\_ (2013). Brief for the United States as *amicus curiae* supporting vacatur and remand, 2012 WL 3613368.

*Bowman v. Monsanto Co.*, No. 11-796 (cert. granted, pending). Brief for the United States as *amicus curiae*, at the Court's invitation, suggesting denial, 2012 WL 3643767; Brief for the United States as *amicus curiae* supporting affirmance, 2013 WL 137188.

*Kappos v. Hyatt*, 566 U.S. \_\_\_\_ (2012). Brief for U.S. Patent and Trademark Office as petitioner, 2011 WL 3808356; Reply Brief, 2011 WL 5999274.

*Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. \_\_\_\_ (2012). Brief for the United States as *amicus curiae*, supporting neither party, 2011 WL 4040414.

*Saint-Gobain Ceramics & Plastics, Inc. v. Siemens Medical Solutions USA, Inc.*, No. 11-301 (cert. denied). Brief for the United States as *amicus curiae*, at the Court's invitation, suggesting denial, 2012 WL 1436668.

*Microsoft Corp. v. i4i Ltd. Partnership*, 564 U.S. \_\_\_\_ (2011). Brief for the United States, as *amicus curiae*, supporting respondents, 2011 WL 991991.

*Applera Corp. v. Enzo Biochem, Inc.*, No. 10-426 (cert. denied). Brief for the United States as *amicus curiae*, at the Court's invitation, suggesting denial, 2011 WL 1881824.

*Bilski v. Kappos*, 561 U.S. \_\_\_\_ (2010). Brief for U.S. Patent and Trademark Office as respondent, 2009 WL 3070864.

*LabCorp v. Metabolite Labs., Inc.*, 548 U.S. 124 (2006) (cert. dismissed as improvidently granted). Brief for the United States as *amicus curiae*, 2005 WL 3533248.

*Merck KGaA v. Integra Lifesciences I Ltd.*, 545 U.S. 193 (2005). Brief for United States as *amicus curiae*, supporting petitioner, 2005 WL 429972.

*Micrel, Inc. v. Linear Tech. Corp.*, No. 02-39 (cert. denied). Brief for the United States as *amicus curiae*, at the Court's invitation, suggesting denial, <http://www.justice.gov/osg/briefs/2002/2pet/6invit/2002-0039.pet.ami.inv.pdf>.

*Traffix Devices, Inc. v. Marketing Displays, Inc.*, 532 U.S. 23 (2001). Brief for the United States as *amicus curiae*, supporting petitioner, 2000 WL 1236028.

I did not present oral argument in any of the above cases.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and

- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

(1) *In re Bilski*, 545 F.3d 943 (Fed. Cir. 2008) (*en banc*) (before then Chief Judge Michel, and Judges Newman, Mayer, Lourie, Rader, Schall, Bryson, Gajarsa, Linn, Dyk, Prost, and Moore), *aff'd*, *Bilski v. Kappos*, 130 S.Ct. 3218 (2010).

This case involved the fundamental question of what types of process innovations are eligible for patent protection, as governed by 35 U.S.C. Section 101. The Patent Office had rejected Mr. Bilski's process claims, directed to hedging the cost risk of a commodity, for failing to satisfy Section 101 of the Patent Act. I was the lead attorney in defending the agency before the Federal Circuit. I drafted the brief and presented oral argument before the panel. Before rendering a decision, the Federal Circuit *sua sponte* ordered the case to be heard *en banc*. I drafted the agency's *en banc* supplemental brief and argued the case before the *en banc* court. The Federal Circuit affirmed the rejection of the claims. *In re Bilski*, 545 F.3d 943 (Fed. Cir. 2008) (*en banc*). The Supreme Court then granted Mr. Bilski's petition for *certiorari*. Working with co-counsel from the Solicitor General's Office and the Department of Justice, I played a significant role in developing the brief. Deputy Solicitor General Malcolm Stewart argued the case for the agency. The Supreme Court affirmed the Federal Circuit's decision, concluding that the claims violated the abstract idea exception to section 101, but rejected the view that the machine-or-transformation test was the sole test for deciding whether an invention is a patent-eligible "process." *Bilski v. Kappos*, 130 S.Ct. 3218 (2010).

In the Federal Circuit appeal, co-counsel were James A. Toupin, then General Counsel, Stephen Walsh, then Acting Solicitor, and Thomas W. Krause, United States Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314, (571) 272-9035; and John J. Fargo, Scott R. McIntosh, and Mark R. Freeman, Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530, (202) 514-2000.

Opposing counsel in the Federal Circuit appeal was David C. Hanson, The Webb Law Firm, One Gateway Center, 420 Fort Duquesne Boulevard, Suite 1200, Pittsburgh, PA 15222, (412) 471-8815.

In the Supreme Court appeal, co-counsel were Elena Kagan, then Solicitor General, Malcolm L. Stewart, and Ginger D. Anders, Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530, (202) 514-2203. Principal opposing counsel was J. Michael Jakes, Finnegan, Henderson, Farabow, Garrett, & Dunner, L.L.P., 901 New York Avenue, NW, Washington, DC 20001, (202) 408-4000.

(2) *Therasense, Inc. v. Becton, Dickinson and Co.*, 649 F.3d 1276 (Fed. Cir. 2011) (*en banc*) (before Chief Judge Rader and Judges Newman, Lourie, Bryson, Gajarsa, Linn, Dyk, Prost, Moore, O'Malley, and Reyna).

This case involved the inequitable conduct doctrine, which is a defense to patent infringement that can bar enforcement of the patent, if proven. The Federal Circuit

granted the patent owner's request for rehearing *en banc* to clarify various elements of this doctrine. The court's *en banc* order specifically invited the Patent Office to submit an *amicus* brief. I played a leading role in the briefing, and presented oral argument as *amicus*. The court agreed with the Patent Office's position that inequitable conduct requires a specific intent to deceive the agency, and that a party invoking the defense must prove both specific intent and materiality by clear and convincing evidence. The majority adopted a narrower standard for materiality than the one urged by the Patent Office.

Co-counsel were Bernard Knight, General Counsel, Janet A. Gongola, and Sydney O. Johnson, Jr., United States Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314, (571) 272-9035; and Scott R. McIntosh, Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530, (202) 514-2000.

Principal counsel for Appellants was John M. Whealan, 2000 H Street, NW, Washington, DC, 20052, (202) 994-2195. Principal counsel for co-appellee Becton Dickinson was Bradford J. Badke, Ropes & Gray, LLP, 1211 Avenue of the Americas, New York, NY 10036, (212) 596-9031. Principal counsel for co-appellee Bayer was Rachel Krevans, Morrison & Foerster, LLP, 425 Market Street, San Francisco, CA 94105, (415) 268-7178.

(3) *Kappos v. Hyatt*, 132 S.Ct. 1690 (2012).

This case involved the scope of judicial review of a Patent Office decision denying a patent application, when that review is sought in district court, pursuant to 35 U.S.C. Section 145, rather than by direct appeal to the Federal Circuit. The question was whether the patent applicant may introduce new evidence in the district court that could have been presented to the agency in the first instance. The Federal Circuit heard the case *en banc* and ruled that Section 145 does not place any limits on the applicant's ability to introduce new evidence. I urged the Solicitor General's Office to file a *certiorari* petition, which was subsequently granted. I played a significant role in developing the brief and an attorney in the Solicitor General's Office argued the case for the agency. The Supreme Court affirmed the Federal Circuit's decision.

Co-counsel were Donald B. Verrilli, Jr., Solicitor General, Malcolm L. Stewart, Beth S. Brinkmann, and Ginger D. Anders, Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530, (202) 514-2203; and Bernard J. Knight, Jr., General Counsel, Robert J. McManus, and Thomas W. Krause, United States Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314, (571) 272-9035.

Principal opposing counsel was Aaron M. Panner, Kellog, Huber, Hansen, Todd, Evans & Figel, PLLC, Sumner Square, 1615 M Street, NW, Suite 400, Washington, DC 20036, (202) 326-7921.



(4) *Microsoft Corp. v. i4i Ltd. Partnership*, 131 S.Ct. 2238 (2011).

Section 282 of the Patent Act states that a patent shall be presumed valid and that a party contending that a patent is invalid bears the burden of proof. This case involved whether Section 282 requires an invalidity defense to be proven by clear and convincing evidence. While the default burden of proof in civil actions is that a plaintiff must prove its case by a preponderance of the evidence, the Federal Circuit had long held that invalidity challenges required clear and convincing evidence. Working with co-counsel from the Solicitor General's Office and Department of Justice, I played a significant role in developing the government's position and *amicus* brief supporting the burden of proof required by the Federal Circuit. Deputy Solicitor General Malcolm L. Stewart presented oral argument for the United States as *amicus curiae*. The Court agreed with the government's position and upheld the Federal Circuit's interpretation of Section 282.

Co-counsel were Neal Kumar Katyal, then Acting Solicitor General, Malcolm L. Stewart, and Ginger D. Anders, Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530, (202) 514-2203; and Bernard J. Knight, Jr., General Counsel, Robert J. McManus, and William LaMarca, United States Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314, (571) 272-9035.

Primary counsel for petitioner was Thomas G. Hungar, Gibson Dunn, 1050 Connecticut Avenue, NW, Washington, DC 20036, (202) 955-8558. Primary counsel for respondent were Seth P. Waxman, WilmerHale, 1875 Pennsylvania Avenue, NW, Washington, DC 20006, (202) 663-6363; and Donald R. Dunner, Finnegan, Henderson, Farabow, Garrett, & Dunner, L.L.P., 901 New York Avenue, NW, Washington, DC 20001, (202) 408-4000.

(5) *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S.Ct. 1289 (2012).

This case involved a party's challenge to the validity of a patented method for using certain drugs to treat a disease, and diagnosing whether to increase the drug dosage. The issue was the scope of the law of nature exception to patentability, and the dividing line between a law of nature and a patent-eligible practical application of a law of nature. I was significantly involved in formulating the government's position and the briefing. Solicitor General Donald B. Verrilli presented oral argument for the United States as *amicus curiae*, urging that the patented method was not merely for a law of nature, but nevertheless was likely invalid due to a lack of novelty. The Supreme Court concluded that the challenged patent claims violated the prohibition against patenting laws of nature.

Co-counsel were Donald B. Verrilli, Jr., Solicitor General, Malcolm L. Stewart, and Mark R. Freeman, Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530, (202) 514-2203; and Bernard J. Knight, Jr., General Counsel, Thomas W. Krause, and Scott C. Weidenfeller, United States Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314, (571) 272-9035.

Primary counsel for petitioner was Stephen M. Shapiro, Mayer Brown, 71 South Wacker Drive, Chicago, IL 60606, (312) 701-7327. Primary counsel for respondent was Richard

P. Bress, Latham & Watkins, LLP, 555 Eleventh Street, NW, Suite 1000, Washington, DC, 20004, (202) 637-2137.

- (6) *In re Inland Steel*, 265 F.3d 1354 (Fed. Cir. 2001) (before Chief Judge Rader, and Judges Newman and Bryson).

This case involved the Patent Office's reexamination of a patent for a method of producing electrical steel with improved magnetic properties. After the Patent Office concluded the patent claims were obvious and therefore unpatentable, based on new evidence presented to the Patent Office during the reexamination proceeding, Inland Steel appealed the agency's decision. I played the leading role in the briefing and I argued the case in the Federal Circuit, which affirmed the rejection of the claims. The court agreed with the Patent Office's reading of the prior art, and also granted the agency broad deference in weighing Inland Steel's evidence of unexpected results.

Co-counsel were Albin F. Drost, then Acting Solicitor, now retired, John M. Whealan, then Deputy Solicitor, now at 2000 H Street, NW, Washington, DC, 20052, (202) 994-2195, and William LaMarca, United States Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314, (571) 272-9035.

Primary opposing counsel was Donald R. Dunner, Finnegan, Henderson, Farabow, Garrett, & Dunner, L.L.P., 901 New York Avenue, NW, Washington, DC 20001, (202) 408-4000. Primary counsel for intervenor USX Corporation was Constantine L. Trela, Jr., Sidley & Austin, LLP, One South Dearborn, Chicago, IL 60603, (312) 853-7293.

- (7) *In re Nuijten*, 500 F.3d 1346 (Fed. Cir. 2007) (before Judges Gajarsa, Linn, and Moore).

This case involved the novel question of whether an artificially created, propagated signal may be patented. The Patent Office had rejected the claimed signal as failing to fall within any of the four categories of patentable subject matter—process, machine, manufacture, or composition of matter—set forth in 35 U.S.C. Section 101. I played a leading role in the briefing and I argued the case in the Federal Circuit. The court, in a divided opinion, affirmed the Patent Office's decision, agreeing with its construction of the statute.

Co-counsel was Thomas W. Krause, United States Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314, (571) 272-9035. Opposing counsel was Jack E. Haken, Phillips Intellectual Property & Standards, P.O. Box 3001, Briarcliff Manor, NY 10510, (914) 333-9650.

- (8) *In re Comiskey*, 554 F.3d 967 (Fed. Cir. 2009) (before then Chief Judge Michel, and Judges Dyk, and Prost).

This case involved a patent applicant's attempt to patent a method of arbitrating disputes arising from wills or contracts. The Patent Office had rejected the claims under 35

U.S.C. Section 103 as obvious, and Mr. Comiskey appealed the decision. I played the lead role in the briefing, and I argued the case in the Federal Circuit. At oral argument the court questioned whether the patent claims should be rejected under 35 U.S.C. Section 101, and ordered supplemental briefing on the issue. I drafted the supplemental brief, setting forth the agency's position that the claims were unpatentable under Section 101. The court's decision affirmed the rejection of the broadest claims, largely based on the reasoning in the supplemental brief.

Co-counsel were James A. Toupin, then General Counsel, John M. Whealan, then Solicitor, and Thomas W. Krause, United States Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314, (571) 272-9035. Primary opposing counsel was Thomas J. Scott, now at Goodwin Procter, LLP, 901 New York Avenue, NW, Washington, DC 20001, (202) 346-4332.

(9) *Ariad Pharmaceuticals, Inc. v. Eli Lilly and Co.*, 598 F.3d 1336 (Fed. Cir. 2010) (*en banc*) (before then Chief Judge Michel, and Judges Newman, Mayer, Lourie, Rader, Bryson, Gajarsa, Linn, Dyk, Prost, and Moore).

The Federal Circuit in this case granted the petition for rehearing *en banc* to resolve the legal question of whether 35 U.S.C. Section 112, paragraph 1, contains a written description requirement that is separate from an enablement requirement. Over the years leading up to the case, the written description requirement had been growing in importance as a tool for containing overly broad patent claims, and the Patent Office had a strong interest in preserving it. Working with co-counsel from the Department of Justice, I played a significant role in developing the government's position and *amicus* brief. An attorney from the Department of Justice presented oral argument for the United States as *amicus curiae*. The *en banc* court's decision agreed with the government's interpretation of Section 112 of the Patent Act, reaffirming the written description requirement.

Primary co-counsel were Mark R. Freeman and Scott R. McIntosh, Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530, (202) 514-2000; and James A. Toupin, then General Counsel, United States Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314, (571) 272-9035.

Primary counsel for appellant was Charles E. Lipsey, Finnegan, Henderson, Farabow, Garrett, & Dunner, L.L.P., 901 New York Avenue, NW, Washington, DC 20001, (202) 408-4000. Primary counsel for appellee was John M. Whealan, 2000 H Street, NW, Washington, DC, 20052, (202) 994-2195.

(10) *In re Beineke*, 690 F.3d 1344 (Fed. Cir. 2012) (before Judges Dyk, Schall, and Reyna).

This case involved Mr. Beineke's appeal to the Federal Circuit from a Patent Office decision rejecting his plant patent applications. The patentability of his plant claims turned on the degree of human activity required by the Plant Patent Act in producing the

claimed plant. I played a leading role in the briefing, and I argued the case in the Federal Circuit. In a case of first impression, the court affirmed the USPTO's decision and interpretation of the Plant Patent Act.

Co-counsel were Amy J. Nelson and Nathan K. Kelley, United States Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314, (571) 272-9035. Primary opposing counsel was Alice O. Martin, Barnes & Thornburg, LLP, One North Wacker Drive, Suite 4400, Chicago, Illinois 60606, (312) 214-8316.

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

My career has primarily been devoted to litigating patent and trademark cases before the Federal Circuit, defending the decisions of the agency's administrative patent and trademark boards. I have also on occasion worked on litigations in which review of a patent or trademark board decision was sought in district court, rather than the Federal Circuit. In addition, I have handled Administrative Procedure Act claims in district court, as well as prosecutions of registered patent attorneys in administrative disciplinary proceedings. In each of these types of matters, there have been occasions where opposing counsel and I settled the dispute, avoiding unnecessary litigation.

As counsel to the agency, I also provide a significant amount of in-house advice and counsel agency decision-makers with an eye towards possible, future litigation. My staff of attorneys and I carefully review proposed new regulations and guidance documents on patent and trademark matters. The agency's recent implementation of many provisions of the America Invents Act is one major example of our internal counseling work.

In addition, my office and I regularly work with other attorneys within the Executive Branch to determine whether to file an *amicus* brief in an intellectual property case, or more generally to develop a coordinated government position on an intellectual property issue. In my role as Solicitor, I have been called upon to do a significant amount of public speaking and engagement with the patent bar and the public, in order to inform the public about new programs and changes at the agency, and also to share the agency's views on many different patent and trademark issues. These regular public outreach efforts also help broaden the agency's perspective in developing policy positions on a host of issues.

I have not performed any lobbying activities on behalf of clients or others.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe

briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught any courses.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I do not have any arrangements for deferred income or future benefits from previous business relationships.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I have no plans, commitments, or agreements to pursue outside employment during service with the court.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

I am unaware of any individuals, family or otherwise, that are likely to present potential conflicts of interest. My wife is a trial attorney at the U.S. Department of Justice's Consumer Protection Branch, which does not litigate cases that typically come before the Federal Circuit. In the unlikely event that a case in

which the Consumer Protection Branch is counsel were to be appealed to the Federal Circuit, I would not participate in that matter as a judge. I am aware of several appeals of decisions by the U.S. Patent and Trademark Office which are pending in the Federal Circuit. I would not participate in those matters as a judge.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I will consult and abide by rules and decisions that address what constitutes a conflict of interest, including 28 U.S.C. Section 455 and the Code of Conduct for United States Judges.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I have spent most of my legal career in the public sector, serving the public interest. Over the years I have worked in the Office of the Solicitor, I have spent many hours counseling and advising individual inventors to help them understand the patent application process. Because procuring a patent often can be a complex and time-consuming process, most applicants are represented by a registered patent lawyer. Although I never represented any of these individual inventors as a client before the agency, I answered their questions about the legal process, and also translated for them the import of an agency action.

In recent years, I have mentored several minority attorneys and law students and become more active in addressing issues that they may face in their professional advancement. I am an Executive Advisor for the Patent Office's Asian Pacific American Network (APANet). I also participate in the Asian Pacific American Bar Association – DC Chapter's formal mentoring program, in which I mentor several local Asian American attorneys.

During law school, as part of New York University's Urban Law Clinic, I represented several low-income persons in landlord tenant disputes to help them remain in their homes.

I also contribute to the community outside of my law practice. Last year, my family and I helped plan and execute a community yard sale to benefit WarChild, an international organization that assists children of war. For the last four years, I have coached a boys' basketball team in a recreational league. I and my family have also volunteered at the annual "feed the homeless" Thanksgiving event held at McPherson Square in Washington, DC.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On August 20, 2012, I received an email from an attorney in the White House Counsel's Office, asking if I was interested in discussing with him the possibility of serving as a judge on the Federal Circuit. I confirmed my interest in a return email and we spoke over the telephone on August 29, 2012. On October 9, 2012, the White House attorney informed me that I would be contacted shortly by an attorney in the Office of Legal Policy of the Department of Justice. Since that day, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On November 20, 2012, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On February 7, 2013, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10\*  
Rev. 1/2012

**FINANCIAL DISCLOSURE REPORT  
NOMINATION FILING**

*Report Required by the Ethics  
in Government Act of 1978  
(5 U.S.C. app. §§ 101-111)*

1. Person Reporting (last name, first, middle initial) Chen, Raymond T.	2. Court or Organization Federal Circuit	3. Date of Report 02/07/2013
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)  Circuit Judge	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination      Date 02/07/2013 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period  1/1/2012 to 1/16/2013
7. Chambers or Office Address  600 Dulany Street Madison West, 8th Floor Alexandria, Virginia 22314		
<b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Insert signature on last page.		

**I. POSITIONS.** (Reporting individual only; see pp. 9-13 of filing instructions.)

☒ NONE (No reportable positions.)

POSITION

NAME OF ORGANIZATION/ENTITY

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

**II. AGREEMENTS.** (Reporting individual only; see pp. 14-16 of filing instructions.)

☒ NONE (No reportable agreements.)

DATE

PARTIES AND TERMS

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_



**FINANCIAL DISCLOSURE REPORT**  
 Page 2 of 8

Name of Person Reporting	Date of Report
Chen, Raymond T.	02/07/2013

**III. NON-INVESTMENT INCOME.** *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*
**A. Filer's Non-Investment Income**
☒ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.		
2.		
3.		
4.		

**B. Spouse's Non-Investment Income** - *If you were married during any portion of the reporting year, complete this section.  
(Dollar amount not required except for honoraria.)*
☒ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE
1.	
2.	
3.	
4.	

**IV. REIMBURSEMENTS** - *transportation, lodging, food, entertainment.  
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)*
☐ NONE *(No reportable reimbursements.)*

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1. Exempt				
2.				
3.				
4.				
5.				

**FINANCIAL DISCLOSURE REPORT**  
 Page 3 of 8

<b>Name of Person Reporting</b>	<b>Date of Report</b>
Chen, Raymond T.	02/07/2013

**V. GIFTS.** *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*
☐ NONE *(No reportable gifts.)*

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.	Exempt		
2.			
3.			
4.			
5.			

**VI. LIABILITIES.** *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*
☐ NONE *(No reportable liabilities.)*

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.	Wells Fargo Financial National Bank	Credit Card	J
2.			
3.			
4.			
5.			

## FINANCIAL DISCLOSURE REPORT

Page 4 of 8

Name of Person Reporting	Date of Report
Chen, Raymond T.	02/07/2013

## VII. INVESTMENTS and TRUSTS – Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. CollegeBoundfund Age-Based Moderate Growth Portfolio		None	M	T	Exempt				
2. SunTrust Bank Accounts	A	Interest	K	T					
3. Fidelity Cash Reserves	A	Interest	L	T					
4. AllianceBernstein Balance Wealth Strategy Fund	A	Dividend	J	T					
5. JNL/Mellon Capital Management 25 Fund		None	K	T					
6. JNL/J.P. Morgan U.S. Government & Quality Bond		None	K	T					
7. JNL/Goldman Sachs Core Plus Bond		None	L	T					
8. JNL/PIMCO Total Return Bond		None	K	T					
9. JNL/Mellon Capital Management Oil & Gas Sector		None	K	T					
10. JNL/Ivy Asset Strategy		None	M	T					
11. JNL/PIMCO Real Return		None	L	T					
12. Aberdeen Asia Bond Institutional	A	Dividend	J	T					
13. Aston/Optimum Mid Cap I	A	Dividend	J	T					
14. BlackRock Liquidity T-Fund Mgmt	A	Dividend	J	T					
15. Driehaus Active Income Fund	A	Dividend	J	T					
16. Federated Intern Govt/Corp Svc	A	Dividend	J	T					
17. Federated Total Rtn Govt Instl Svc	A	Dividend	J	T					

1. Income Origin Codes:  
(See Columns B1 and D4)2. Value Codes:  
(See Columns C1 and D3)3. Value Method Codes:  
(See Column C2)

A = \$1,000 or less

F = \$50,001 - \$100,000

N = \$250,001 - \$500,000

J = \$25,000,001 - \$50,000,000

Q = Appraisal

U = Book Value

B = \$1,001 - \$2,500

G = \$100,001 - \$1,000,000

K = \$15,001 - \$50,000

O = \$500,001 - \$1,000,000

R = Cost (Real Estate Only)

V = Other

C = \$2,501 - \$5,000

H = \$1,000,001 - \$5,000,000

L = \$50,001 - \$100,000

P1 = \$1,000,001 - \$5,000,000

P4 = More than \$50,000,000

S = Assessment

W = Estimated

D = \$5,001 - \$15,000

I2 = More than \$5,000,000

M = \$100,001 - \$250,000

P2 = \$5,000,001 - \$75,000,000

T = Cash Market

E = \$15,001 - \$50,000

## FINANCIAL DISCLOSURE REPORT

Page 5 of 8

Name of Person Reporting	Date of Report
Chen, Raymond T.	02/07/2013

## VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
18. Federated Short-Term Income Fund	A	Dividend	J	T					
19. iPath Seasonal Natural Gas ETN		None	J	T					
20. iShares Dow Jones US Home Construction	A	Dividend	J	T					
21. iShares Dow Jones US Real Estate	A	Dividend	J	T					
22. JPMorgan Core Bond A	A	Dividend	J	T					
23. Lazard US Global Listed Infrastructure		None	J	T					
24. Merger Fund	A	Dividend	J	T					
25. PIMCO Investment Grade Corp Bd Admin	A	Dividend	J	T					
26. PIMCO Low Duration Admin	A	Dividend	J	T					
27. Ramius Dynamic Replication Fund	A	Dividend	J	T					
28. Ramius Strategic Volatility I	A	Dividend	J	T					
29. Ramius Trading Strat Managed Futures I	A	Dividend	J	T					
30. T. Rowe Price High Yield Adv	A	Dividend	J	T					
31. T. Rowe Price Short Term Bond Adv	A	Dividend	J	T					
32. T. Rowe Price U.S. Bond Index	A	Dividend	J	T					
33. SPDR Gold Trust		None							
34. Barclays ETN S&P Dynamic VEQTOR ETN		None							

1. Income Gain Codes: (See Columns B1 and I4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P1 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 O = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	
3. Value Method Codes (See Column C2)					

**FINANCIAL DISCLOSURE REPORT**

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<b>Name of Person Reporting</b>	<b>Date of Report</b>
Chen, Raymond T.	02/07/2013

**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)
☐ **NONE** (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period			D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)	
35. ProShares Ultra Pro Short S&P500		None								
36. AQR Managed Futures Strategy N		None								
37. Natixis ASG Managed Futures Strategy A		None								
38. Rydex Series Trust US Government		None								
39. MainStay Epoch Global Equity Yield	A	Dividend								
40. Arbitrage Fund Class R		None								
41.										
42.										

1. Income/Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P1 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 I2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$50,000
2. Value Codes: (See Columns C1 and D3)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	
3. Value Method Codes: (See Column C2)					

**FINANCIAL DISCLOSURE REPORT**  
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Name of Person Reporting	Date of Report
Chen, Raymond T.	02/07/2013

**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.** *(Indicate part of report.)*

**FINANCIAL DISCLOSURE REPORT**  
Page 8 of 8

Name of Person Reporting	Date of Report
Chen, Raymond T.	02/07/2013

**IX. CERTIFICATION.**

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: *s/* Raymond T. Chen

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
Suite 2-301  
One Columbus Circle, N.E.  
Washington, D.C. 20544

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		27	888	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities - see schedule		627	931	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		15	119
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable - personal residence		516	167
Real estate owned - personal residence	1	104	200	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		33	715				
Cash value-life insurance		27	326				
Other assets itemize:							
Thrift Savings Plan		481	190				
				Total liabilities		531	286
				Net Worth	1	770	964
Total Assets	2	302	250	Total liabilities and net worth	2	302	250
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							



## FINANCIAL STATEMENT

## NET WORTH SCHEDULES

<u>Listed Securities</u>	
Aberdeen Asia Bond Fund	\$ 3,275
AllianceBernstein Balance Wealth Strategy Fund	6,308
Aston/Optimum Mid Cap Fund	1,648
BlackRock Liquidity Funds T-Fund Portfolio	750
CollegeBoundfund Age-Based Moderate Growth Portfolio	140,036
Driehaus Active Income Fund	4,979
Federated Intermediate Government/Corporate Fund	2,630
Federated Short-Term Income Fund	5,147
Federated Total Return Government Bond Fund	2,522
Fidelity Cash Reserves	51,857
GLG International Small Cap Fund	497
iPath Seasonal Natural Gas ETN	1,544
iShares Dow Jones US Home Construction	1,922
iShares Dow Jones US Real Estate	4,611
JNL/JPMorgan U.S. Government & Quality Bond Fund	35,794
JNL/Goldman Sachs Core Plus Bond Fund	54,358
JNL/PIMCO Total Return Bond Fund	35,882
JNL/Mellon Capital Management 25 Fund	41,283
JNL/Mellon Capital Management Oil & Gas Sector Fund	17,783
JNL/Ivy Asset Strategy Fund	105,236
JNL/PIMCO Real Return	76,311
JPMorgan Core Bond Fund	3,110
Lazard US Global Listed Infrastructure	1,982
Merger Fund	1,244
PIMCO Investment Grade Corporate Bond Fund	2,371
PIMCO Low Duration Fund	5,655
Ramius Dynamic Replication Fund	1,575
Ramius Strategic Volatility I	1,544
Ramius Trading Strategies Managed Futures Fund	1,491
T. Rowe Price High-Yield Fund	4,631
T. Rowe Price Short Term Bond Fund	7,300
T. Rowe Price U.S. Bond Enhanced Index Fund	2,655
Total Listed Securities	<u>\$ 627,931</u>

AFFIDAVIT

I, Raymond T. Chen, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

2/7/13

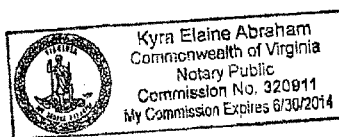
(DATE)

RTL

(NAME)

Kyra Elaine Abraham

(NOTARY)



Senator HIRONO. Thank you to both of you.

There are currently 81 district and circuit vacancies in the federal judiciary. More than 10 percent of lower federal courts are now, or will soon be, vacant. According to the Congressional Research Service, this is the longest period of historically high vacancy rates in the federal judiciary in more than 35 years.

We need to continue to work to confirm judges so that our judiciary is able to resolve cases in an expeditious manner, and so all Americans can receive swift access to justice. Most of these vacancies are in the district courts, which are the courts that Americans looking for their day in court need staffed the most.

This hearing is an important step in the process of filling some of those vacancies and assuring that the courts are able to quickly resolve cases and do the work the people require of them. Because federal judges are required to give priority to criminal cases over civil ones and the number of criminal cases have increased 70 percent in the past decade, judges are forced to delay civil cases, often for years. This means long delays for American individuals and businesses seeking justice.

I look forward to the Senate's swift actions on the President's nominations. Once again, I welcome both of our nominees and your families and friends.

I would now like to yield to Ranking Member Senator Grassley for his comments.

**OPENING STATEMENT OF HON. CHUCK GRASSLEY, A U.S.  
SENATOR FROM THE STATE OF IOWA**

Senator GRASSLEY. I will put a statement in the record—emphasize one point. Before I do that, I would welcome all of you and congratulate all of you, and I know your family and friends are proud of you.

On the point of the extent to which Congress is moving along with the judicial nominees. We have approved 186 today, disapproved two. That is a .989 batting average.

I do not know whether very many Presidents have done better than that. The really shortcoming of whether or not these vacancies are going to be approved—I think there are about 85 vacancies. Maybe your two would be subtracted from that, but let us say 80 to 85 vacancies. I believe that there are 65 that have no nominee up here.

Now I do not know whether there is an understanding of how the Constitution works or not, but the Senate cannot approve any nominees that have not been submitted to us by the President of the United States. So if there is any concern about vacancies on the court, it would really help if the President would get those nominees up here.

I will put the rest of my statement in the record, including compliments of our two nominees for their nominations.

My staff corrects me. We have 82 vacancies and 61 nominees to come up here to fill those vacancies.

[The prepared statement of Senator Grassley appears as a submission for the record.]

Senator HIRONO. Thank you very much, Senator Grassley. You can tell by both of our comments that there is an incentive on all our parts to move these nominations along.

The Committee will now proceed with five-minute rounds of questioning. It should go well since there are two of us here.

[Laughter.]

Senator HIRONO. So I will start the questioning.

For Ms. Dorsey, what are the challenges you see of serving as a federal district court judge after being in private practice for your entire, very illustrious career?

Ms. DORSEY. Thank you, Senator Hirono, for the question. First of all, I recognize that the world of an advocate is different than the world of a judge. An advocate's job as an attorney is to advocate for her client, whereas the role of a judge is as a neutral whose job is to faithfully apply the law to the facts of every case.

The main challenge that I think I can foresee if I am fortunate enough to be confirmed as a United States district court judge is that my experience in the criminal law realm, particularly the federal criminal law realm, is limited. My career, as Senator Reid has certainly explained, has been focused on complex civil litigation and appeals. My criminal experience is limited to a summer at the Ventura County District Attorney's office in California and two years of drafting criminal appeals under the supervision of an attorney working for the California Pro Bono Project, Appellate Project. Both of those experiences were entirely State-based law.

So if I were to be confirmed, I would need to certainly refamiliarize myself with the federal rules of criminal procedure. Thank you.

Senator HIRONO. I would say that with your background in complex civil litigation, you probably are a very quick learner. I am sure that will not be a challenge that is insurmountable.

Would you like to just discuss, very briefly, what you consider the most important qualities in a judge?

Ms. DORSEY. Certainly. I believe that good judges have respect for and fidelity to the law and to precedent and recognize their limited role in our constitutional system to apply judicial restraint. I also think that good judges are respectful to the parties before them in court and have an extraordinary commitment to work ethic and to hard work.

Senator HIRONO. Thank you. For Mr. Chen: When I had a chance to meet with you we talked about some of the issues that are arising in the patent area. So I note that multiple academic studies have shown a dramatic increase in the amount of patent litigation brought by patent assertion entities, more commonly known as patent trolls. So start-ups, small companies, and non-tech companies are often the targets of these cases, and 82 percent of these lawsuits involve software and Internet patents.

How much of this problem is driven by low-quality software patents, and what role can the federal circuit play in addressing this problem of basically people bringing lawsuits just so that they can settle and come up with money? These are the people we refer to as patent trolls. Would you talk a little bit about your concerns along these lines?

Mr. CHEN. Thank you, Senator. It is a very complex issue. The question of is there an abusive patent litigation going on right now in our country—I have heard these sorts of concerns.

What I am hearing and what I understand is there are companies that are benefiting from what I would call an asymmetry in litigation in the sense that it does not cost very much to bring a patent lawsuit, but it can be very expensive from the defendant's perspective to extricate yourself from a lawsuit. What I am hearing is that there are times where the patent owner—whether it is a non-practicing entity, or a patent assertion entity, or somebody else—is able to rely on that cost differentiation to extract a royalty and perhaps be overreaching with the assertion of what is the true scope of the patent.

It is hard for me to know what is the scale of the problem and how severe it is. I do take your point, though, that anything that the patent office can do to improve quality is going to at least improve the situation to a certain level. I think there are questions where people are overreaching. They have a valid patent, but they are overreaching in what they believe is a reasonable scope of the patent. Then there is just the assertion of invalid patents.

So I think the patent office can do more, and in fact, they are doing more thanks to the Leahy-Smith *America Invents Act* because now there is an opportunity for people that are defendants to bring patents of dubious validity back to the agency for an administrative review. It can be much cheaper and faster than ordinary patent litigation. Then there are things that the Patent Office is constantly doing to try to improve the quality of examination.

Senator HIRONO. Thank you for pointing out that this is a complex area and we do need to be able to correctly identify the extent of the problem and the depth of it before we seek to address it, particularly, at the Congressional level. Thank you.

Senator GRASSLEY, would you like to ask questions?

Senator GRASSLEY. Yes. Thank you very much. I am going to start with you, Mr. Chen. In preface to my questions is the fact that I have been a strong encourager of whistleblowing in government and involved with Senator Levin almost 20 years ago on the *Whistleblower Protection Act*. So you know where I am coming from.

I guess before I ask any questions, it is like preaching to you that I will not have any control over once you are approved. It is kind of along this line. I do not know whether there is much appreciation of the value of whistleblowing in our government. We have a constitutional responsibility of oversight. We have passed the law. You do not forget about it. You make sure that it is faithfully executed well.

Congress cannot ever hire enough people to know where all of the skeletons are buried, what closets they are in. So we rely a great deal on information coming to us. I have come to the conclusion that whistleblowers are about as respected as skunks at a picnic by their peers and by the organizations that they are in, because in government there is a great deal of peer pressure to go along to get along. It seems like almost every day my staff is telling me about somebody we've got to do extra work to protect. Even a Senator protecting them does not do the good it does.

Well, the reason I am asking you this is because these cases eventually come to you. I am sure you know that. So I just hope that you go on the court with some sympathy toward whistleblowers. I believe this court has an abysmal record of supporting whistleblowers. Anything I can do to encourage you to look at it a little bit deeper and see if they are getting justice, I would appreciate it.

So my first question to you is can you describe what experience, if any, you have had with the *Whistleblower Protection Act*? If you tell me you have none, that is Okay. I still would like to know if you have had.

Mr. CHEN. Thank you, Senator. No, I have not.

Senator GRASSLEY. Okay. So then I guess I would say would you take a little special effort to become acquainted with these problems and see that justice is done.

Let me ask you this. I think you can answer this. How would you approach these types of cases? What is your understanding of the standard of proof of such cases?

Mr. CHEN. Senator, I will be approaching this category of cases, if I am lucky enough to be confirmed, as I will be approaching any case, where I will be looking at the text and structure of the statute. If the language is plain and clear, then simply following that.

In terms of the standard of proof, I have recently become familiar with a few old federal circuit cases, and I also understand that there was a recent amendment to the *Whistleblower Protection Act* called the *Whistleblower Protection Enhancement Act*. That was enacted last year. I understand, among other things, it divested the federal circuit of exclusive jurisdiction over hearing this subcategory of appeals from the MSPB. There were other details and provisions in that act as amended. I would follow the plain language of those amendments regardless of any statements or case law that came before it.

Senator GRASSLEY. All right. I will move on to another subject. Our Chair asked a little bit along the lines of patents, but I come from this point, during a panel discussion in 2011 about the role of government, intellectual property, and stimulating innovation, you commented on the Supreme Court's generalist view of patent law and that the court has repeatedly rejected the federal circuit's attempts to establish a bright-line rules in litigation.

You also insisted it was crucial for patent examiners to have clear rules from the courts. I am going to ask you a few questions along this line, and I will ask them separately. I guess I have three.

In your view has the Supreme Court failed in clarifying patent law?

Mr. CHEN. I think what they have done is adjusted the standards and help provide, I understand, in their view, to ensure that there are more accurate results in applying patent law to certain fact patterns.

Senator GRASSLEY. What role should the Supreme Court play in making patent law?

Mr. CHEN. Well they should be, of course, construing the statute rather than engaging in policy making.

Senator GRASSLEY. How would you approach a vacuum in the law? Do you invent something? Draw from other jurisdictions? Fill in with similar cases? What would be your source and process?

Mr. CHEN. If you are asking about a case of first impression and the statute was somehow ambiguous or unclear, I would have to go through the methodology the Supreme Court sets forth in trying to ascertain what was the legislative intent in those circumstances. Certainly I would be looking for any Supreme Court or federal circuit precedent on an issue that is somehow closely related to the one at hand in order to see if there is some kind of logical guidance that could apply in this particular circumstance. I would certainly look to the briefs and arguments made by both sides.

At the same time, if it is a statute that Congress has conferred the authority to an agency to administer, then under those circumstances, under *Chevron* deference, I believe a court ought to give deference to any reasonable construction by an agency.

Senator GRASSLEY. My last question to you would be that you have had significant experience arguing patent cases in front of federal circuit and writing briefs for Supreme Court cases. How has this experience prepared you to sit on the federal circuit?

Mr. CHEN. Thank you, Senator. I think it has helped me to prepare should I become a member of the bench, because in some ways it is a similar practice for a judge. You have to be meticulous about being a master of the record. You have to have a full understanding of the law and all of its nuances, and you have to write a brief that clearly communicates the reasoning for why, based on how the law should be applied to the facts, the outcome should come out a certain way while at the same time addressing all counterarguments.

In some ways, I see a judge's role as having to do something similar to that. It is a different perspective, but of course a judge has to, likewise, master the record, know the law well, and apply that law to the facts, while at the same time not only explaining the reasoning for why one side should prevail but also to give reasoning for why the counterarguments ultimately were not persuasive.

Senator GRASSLEY. Thank you. Now to Ms. Dorsey.

I will start with a very general question about experience as you transition to being a judge. I would like to ask about this experience. Your questionnaire did not include a large amount of trial experience outside of State courts. Could you tell me briefly a little more about your experience that helps us understand your qualifications to supervise a trial court?

Ms. DORSEY. Certainly. Thank you, Ranking Member Grassley, for the question. My experience has been primarily with complex civil litigation matters. The reality of that type of a practice is that very few cases actually make it to trial, particularly federal trials.

However, being a member of a trial team in numerous instances and having tried several cases on my own has given me the experience that I believe qualifies me if I were fortunate enough to be confirmed as a federal district court judge, because it has shown me all of the different phases of litigation, which I am extremely familiar with. The other thing that it has done also, Senator, it has introduced me to how important our legal system is to all of the

litigants that have to appear before courts and how important the rule of law and precedent is and the need to have judges faithfully apply precedent to the facts of each case in order to provide certainty to the litigants before it.

Senator GRASSLEY. Okay. I will ask you some questions about some things you have written before, understanding on my part that views can change, but I want to ask you in that context. This was something you wrote while in law school. The article you wrote where you were supporting the legalization of physician-assisted suicide—what is your current view on the topic of physician-assisted suicide?

Ms. DORSEY. Thank you for the question and the opportunity to clarify that article. As you mentioned, that was something that I wrote while I was in law school nearly two decades ago. At the time, the U.S. Supreme Court had just granted certiorari to the Ninth Circuit's decision in the *Compassion in Dying* case. So it was a topical issue and not one in which I had any expertise whatsoever.

A lot has changed since I wrote that article. First of all, the U.S. Supreme Court reversed the Ninth Circuit in the *Washington v. Glucksberg* case and held that there is no fundamental right to die. Second, and I think most importantly to your question, Senator, is that my experience as a litigator has given me a completely different perspective than many of those that I think I have articulated in that piece. I now recognize the value in judges faithfully applying the law to the facts.

Senator GRASSLEY. Okay. Moving on to another issue along the same line: In the same article you praised decisions *Roe*, *Casey*, *Cruzan*, and *Romer*—"In these cases, the court was willing to forge ahead to create a just outcome with regard to the usual decisional restraints." From my point of view, how I see what judges should do, that is a little troubling because it suggests that judges should seek just outcomes regardless of decisional restraints. Again, I recognize you wrote that in law school, but my question is do you still subscribe to that view?

Ms. DORSEY. No. I do not, Senator.

Senator GRASSLEY. If you are confirmed and if the precedent of the circuit or Supreme Court dictates that you come to a result that you believe is fundamentally wrong or unjust, how would you proceed with the case?

Ms. DORSEY. If I were fortunate enough to be confirmed as a district court judge, I would recognize that my job was to apply the existing precedent to the facts of the case regardless of my personal viewpoints. I would apply the law.

Senator GRASSLEY. All right. I think I am done questioning you. There is another series of questions I am considering asking you, but I would do that in writing.

Ms. DORSEY. Thank you, Senator.

Senator GRASSLEY. If I submit them, I would appreciate an answer.

Ms. DORSEY. Absolutely.

Senator GRASSLEY. Thank you.

Senator HIRONO. Thank you, Senator Grassley.

Senator Lee, would you like to proceed with your questioning?



Senator LEE. Thank you very much, Madam Chair, and thanks to both of you for being with us today. I apologize for my tardiness. I had two different committee hearings at the same time as this one. They do not coordinate those all the time.

Why don't we start with Ms. Dorsey. Do you have any judicial role models? Anyone? They can be at any level of the federal judiciary, except John Marshall because everybody loves John Marshall. That is too easy.

Ms. DORSEY. Unfortunately, I cannot count myself as a scholar of judicial precedent and judicial role models. So for me, my judicial role models are the judges that I have had the opportunity to practice in front of and who have treated the litigants before them with respect and worked extremely hard and been very prepared for their hearings.

Senator LEE. Anything about the judicial philosophy of any of those judges, or is there anything in particular that you would describe about what would be your judicial philosophy on the bench?

Ms. DORSEY. I believe that a good judge has respect for, and faithfully applies, legal precedent and recognizes the limited role that judges play in our constitutional system and in providing judicial restraint. I also think that judges should be impartial and respectful and have a deep and abiding work ethic.

Senator LEE. With regard to statutory construction, would you call yourself a textualist, and intentionalist, a purposivist, or any other kind of "ist"?

Ms. DORSEY. I would not call myself any kind of an "ist."

Senator LEE. Not even a textualist?

Ms. DORSEY. Not even a textualist. However,—

Senator LEE [continuing]. People call themselves textualists these days.

[Laughter.]

Ms. DORSEY. I could not ascribe a label to my views on statutory interpretation, but I can tell you that I certainly—if I were interpreting a statute, I would look, first and foremost, to the text and the plain language of statute, which is the primary method of determining its legislative intent.

Senator LEE. All right. Tell me what you mean by its "primary method." When does it become secondary, or does it at any time?

Ms. DORSEY. It never becomes secondary. It is always the first step. Then other cannons of statutory interpretation may be employed only in the event that it is impossible to come to a single conclusion about the statute's meaning.

Senator LEE. Even if they are legislative history statements suggesting that something opposite of what the text says was intended?

Ms. DORSEY. Not if the statute is not ambiguous.

Senator LEE. All right. Do you believe that the Constitution provides for a substantive due process, meaning that it prohibits the government from infringing on certain fundamental rights regardless of what procedural guarantees are provided to the individual?

Ms. DORSEY. The U.S. Supreme Court has recognized various substantive due process rights, and if I were fortunate enough to be confirmed as a district court judge, I would apply that precedent.

Senator LEE. Do you think *Lochner v. New York* was correctly decided and should still be the state of the law today? It is the 1905 case involving New York state statute imposing some labor rules on bakeries in New York.

Ms. DORSEY. Senator, to the extent that I were called upon to interpret a case or decide a case in which a *Lochner* question were presented, I would apply the then existing, binding precedent to the case before me.

Senator LEE. Mr. Chen, do you have any judicial role models you will tell us about?

Mr. CHEN. I can say one judge that I do admire. It is Judge Learned Hand.

Senator LEE. Tell me why.

Mr. CHEN. Well for a few different reasons. Number one, I think he is regarded as one of the very best judges, of course, that never came onto the Supreme Court. Beyond that, I think he is regarded as a model of judicial restraint. He was impartial, independent. He contributed to a lot of different areas of the law.

For me, I found it interesting that he seemed to be particularly interested and devoted to patent law and wrote a lot of patent law decisions. So I found that interesting.

Senator LEE. Particularly, in light of the court on which you have been nominated to serve. It is also fantastic that his first name was an adjective——

[Laughter.]

Senator LEE. Sort of an adjective one would want associated with one's name if one were a judge. The name Mike does not have a similar ring to it. Neither does Raymond, but that is okay. We are not going to hold that against you.

[Laughter.]

Mr. CHEN. Right.

Senator LEE. I see that my time has expired, and I appreciate Madam——

Senator HIRONO. Senator, if you have further questions, please continue for a few moments.

Senator LEE. Excellent. Thank you.

Tell me about your judicial philosophy, Mr. Chen.

Mr. CHEN. Yes, Senator. I think it is to follow the rule of law and to be bound by precedent. I think the doctrine of *stare decisis* is essential to any orderly, coherent administration of justice in order to create a predictable system so people can rely on it. Particularly in a property right system like patent law where people that own patents need to be able to rely on what the law is and so that they can organize their affairs accordingly.

At the same time any judge, in my conception, needs to be impartial and have great integrity in just deciding the case that is before them and writing narrowly and not sweepingly to give ill-advised decisions on broader topics than are really necessary to resolve the facts at hand.

Senator LEE. Does the law provide a right answer in cases? Would it be your expectation if you were confirmed to this position that in the overwhelming majority of cases, perhaps all or nearly all of them, that there would be a right answer? People might disagree. The losing party might disagree as to whether or not you,

in fact, reached that. Do you start from the presupposition that there is a right answer?

Mr. CHEN. That is what I would be searching for, a correct interpretation of law based on the statutes and the precedent that came all ready that interpreted the statute.

Senator LEE. Now, Ms. Dorsey, you have been nominated to serve on a district court. District court judges have a special set of obligations because, of course, most cases get filed in and are finished while they are still pending in district court. So you are likely to be the most justice that people get, whether we are talking about civil litigants or people involved in criminal cases.

Within the realm of civil litigation, I have long been troubled by a natural tendency that I think a lot of district judges have. It does not necessarily follow along any ideological line. I think you have people of all ideological predispositions that fall into this trap, but there is a natural tendency that I think some district judges have to want to deny dispositive motions.

So for example, 12(b)(6) motions or Rule 56 motions based on the line of reasoning that says, I want the plaintiff to have her day in court. I think sometimes this can cause problems. There is a double or a triple incentive to do that.

There is the “I want the plaintiff to have her day in court” thinking. There is also the thinking that “if I grant this motion for summary judgment, or if I grant this motion to dismiss, I have to write an opinion. That is going to take some time. That opinion may become immediately appealable, and I might get overruled. Whereas, if I just allow this case to proceed and I deny the dispositive motion, then it is a lot easier.”

I might be able to do that in a one-page order just saying it is denied. I find a genuine issue of material fact precluding summary judgment, or whatever the corresponding analogy might be under Rule 12(b)(6). I would find for these reasons that a valid claim upon which relief could be granted has been stated.

So as a result, sometimes what we see in the judiciary is what I call trial by attrition where people will have what is probably a meritorious dispositive motion filed, but it is denied largely because of these circumstances. Then the parties end up settling on terms different than what they should.

So I guess I have really loaded the question now.

[Laughter.]

Senator LEE. The question I would ask is, which one is worse or is one discernibly worse, not granting a meritorious dispositive motion or granting a non-meritorious dispositive motion?

Ms. DORSEY. Thank you for the questions, Senator, and for your concerns about this issue. I can tell you decidedly that it has not been my experience in the United States district court for the district of Nevada that judges are doing what you have explained.

Senator LEE. That is awesome that you are saying that by the way, because you would be serving with these people. So good—

Ms. DORSEY. I can tell you that is not occurring. However, I do not think that a district court judge gets to answer the question of which one is worse because it does not matter. The answer is that the judge applies the law to the facts of each individual case.

This gets back to the same question, essentially, that you just asked Mr. Chen, whether there is a right answer in the law. I think the law provides the answer and in each case that is what must control. Not some predisposition to want to see a certain outcome or a certain process occur.

Senator LEE. All right. Thank you very much.

Ms. DORSEY. Thank you.

Senator LEE. I appreciate both of you. Thank you, Chair.

Senator HIRONO. Thank you very much, Senator Lee. This discussion is interesting for me, too, because I fully expect both of you to do a great job should you be confirmed, and that is why we have the appeal process, to make sure we get to the right conclusions. So I thank you both very much and your families.

We are adjourned. The record will remain open for one week.

[Whereupon, at 3:21 p.m., the Committee was adjourned.]

**Statement of Senator Charles Grassley  
Ranking Member  
Committee on the Judiciary  
United States Senate**

**Before the Committee on the Judiciary**

**On the Nominations of:**

*Raymond T. Chen, to be United States Circuit Judge for the Federal Circuit  
Jennifer A. Dorsey, to be United States District Judge for the District of Nevada*

**April 24, 2013**

Madam Chairman,

I join you in welcoming the nominees who are here today with their families and friends.

Today, we confirmed another nominee to the federal judiciary. We have now confirmed 185 District and Circuit nominees, including 14 this year. We have taken positive action, in one way or another, on 91% of the judicial nominees submitted by the President. So we continue to move forward, as I indicated I would do, on consensus nominees.

On today's agenda we have the nomination of Ms. Dorsey to the U.S. District Court for the District of Nevada, and the nomination of Raymond Chen to be a United States Circuit Judge for the Federal Circuit.

The Federal Circuit is unique among the Courts of Appeals. It is not geographical based but has nationwide subject matter jurisdiction in designated areas. In addition to international trade, the Court hears cases on patents, trademarks, government contracts, certain money claims against the United States government, veterans' benefits, and public safety officers' benefits claims.

Of particular interest to me, the U.S. Court of Appeals for the Federal Circuit has exclusive jurisdiction over cases related to federal personnel matters. That includes exclusive jurisdiction over appeals from the Merit Systems Protection Board (MSPB) which hears whistleblower cases under the whistleblower protection act.

Madam Chairman, I will not take the time here to repeat the full biographical information on our nominees, but again, I welcome them, congratulate them on their nominations, and look forward to their testimony.

Raymond T. Chen is nominated to be United States Circuit Judge for the Federal Circuit. Since 1998, he has served in the United States Patent and Trademark Office, Office of the Solicitor. He was an Associate Solicitor from 1998 to 2008. Since then he has served as Deputy General Counsel for Intellectual Property Law and Solicitor. Prior to his service in the Patent and Trademark Office, Mr. Chen served as a Technical Assistant for the United States Court of Appeals for the Federal Circuit. He began his legal career as an associate with Knobbe, Martens, Olsen & Bear. Mr. Chen is a graduate of the University of California, Los Angeles and New York University School of Law. The ABA Standing Committee on the Federal Judiciary rated him unanimously as Well-Qualified.

Jennifer A. Dorsey is the President's nominee for the United States District Court for the District of Nevada. She is a graduate of the University of Nevada at Las Vegas and Pepperdine University School of Law. After graduation in 1997 she joined the firm of Kemp, Jones & Coulthard, LLP, as an associate. Since 2004 she has been a partner of that firm. The ABA Standing Committee on the Federal Judiciary gave her a rating of Substantial Majority – Qualified; Minority – Not Qualified.



Questions for the Record for Mr. Chen  
Senator Ted Cruz

Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Questions for the Record for Ms. Dorsey  
 Senator Ted Cruz

Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

**Senator Chuck Grassley  
Questions for the Record**

**Raymond T. Chen  
Nominee, U.S. Circuit Judge for the Federal Circuit**

1. At your confirmation hearing I asked questions pertaining to the Whistleblower Protection Act (WPA). I appreciated your taking the time to familiarize yourself with some of these issues prior to the hearing. While in *White v. Department of Air Force*, 391 F.3d 1377 (2004), the Federal Circuit appears to have backed off of the “irrefragable proof” standard annunciated in *LeChance v. White*, 174 F.3d 1378 (1999), I have concerns that the irrefragable proof standard has not been completely extinguished.
  - a. In *White*, the Federal Circuit used a formulation of gross mismanagement that could cause confusion. The Court held that “for a lawful agency policy to constitute ‘gross mismanagement,’ an employee must disclose such serious errors by the agency that a conclusion the agency erred is not debatable among reasonable people.” In your understanding of *White*, are disclosures of “gross mismanagement” subject to a higher standard than the reasonable belief standard applied to other disclosures? Please review any applicable precedent in addressing this question.
  - b. In your understanding of Federal Circuit precedent, is there any context where a whistleblower would be required to rebut by “irrefragable proof” the “presumption that public officers perform their duties correctly, fairly, in good faith, and in accordance with the law and governing regulations”?
  - c. Do you believe “substantial evidence” would be a more appropriate standard in this context for whistleblower cases?
2. What is the most important attribute of a judge, and do you possess it?
3. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
4. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?
5. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?
6. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

7. In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution? Please explain
8. Under what circumstances, if any, do you believe an appellate court should overturn precedent within the circuit? What factors would you consider in reaching this decision?
9. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?
10. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?
11. You have spent most of your legal career as an advocate for the United States Government. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?
12. Do you think that collegiality is an important element of the work of the Federal Circuit? Please explain how you would approach your work and interaction with colleagues on the Court.
13. At your hearing, you and Senator Lee had a conversation about the law providing a “right answer” in cases. At a speech in 2005, Justice Scalia said, “I think it is up to the judge to say what the Constitution provided, even if what it provided is not the best answer, even if you think it should be amended. If that's what it says, that's what it says.”
  - a. Do you agree with Justice Scalia?
  - b. In your view, is it possible in a case to arrive at the “right answer” even though it might not be the “best answer?”
  - c. Do you believe a judge should consider his or her own values or policy preferences in determining what the law means? If so, under what circumstances?
14. What is your judicial philosophy on applying the Constitution to modern statutes and regulations?

15. Some people refer to the Constitution as a “living” document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?
16. In *Brown v. Entertainment Merchants Association.*, Justice Breyer supplemented his opinion with appendices comprising scientific articles on the sociological and psychological harm of playing violent video games.  
When, if ever, do you think it is appropriate for appellate judges to conduct research outside the record of the case?
17. Please describe with particularity the process by which these questions were answered.
18. Do these answers reflect your true and personal views?

**Senator Chuck Grassley**  
**Questions for the Record**  
**Jennifer Dorsey**  
**Nominee, U.S. District Judge for the District of Nevada**

1. I have some concerns regarding several political contributions you and other members of your law firm made during the approximate time frame when you were being considered for this nomination. There is nothing wrong with donating to political campaigns. However, the timing of these contributions raises some questions that I would like to clarify.

According to public records, you contributed \$2,500 to a U.S. Senate campaign on March 31, 2012. This money was then returned to you on April 30, 2012. This donation coincided, roughly, with the consideration of your nomination.

- a. Did you attend a campaign function in connection with that contribution?
  - b. What were the circumstances surrounding your initial contribution?
  - c. At the time, were you aware that your law partner Will Kemp also made a \$2,500 contribution to the same U.S. Senate campaign that same day? If so, when did you become aware of it and what were the circumstances of your knowledge?
  - d. Your March 31, 2012 contribution was returned to you one month later on April 30, 2012. What were the circumstances surrounding your donation's return? Were you given an explanation as to why it was returned to you? If so, please describe fully.
2. The day after your donation was returned to you, Mr. Kemp donated \$100,000 to a Democratic Senate Political Action Committee (PAC).
    - a. Were you aware that Mr. Kemp intended to make a contribution to the PAC before it was transmitted on May 1, 2012?
    - b. When did you become aware Mr. Kemp intended to make a donation to the PAC? What were the circumstances and context? Please describe fully.
    - c. Did Mr. Kemp ever communicate to you the reasons motivating his decision to make the donation? If so, what did Mr. Kemp communicate to you?
  3. Two weeks later, a different law partner, Mr. Jones, donated \$50,000 to the same Democratic Senate Political Action Committee.
    - a. Were you aware that Mr. Jones intended to make a contribution to the PAC before it was transmitted?

- b. When did you become aware Mr. Jones intended to make a contribution to the PAC? What were the circumstances and context? Please describe fully.
  - c. Did Mr. Jones ever communicate to you the reasons motivating his decision to make the contribution? If so, what did Mr. Jones communicate to you?
- 4. Do you have any reason to believe or suspect that these substantial contributions were made in an effort to assist you in obtaining a nomination to the federal bench? Please fully explain your response.
- 5. What assurances can you give this committee that, should you be confirmed, you will be able to eliminate any potential biases and influences, and that your courtroom decisions will not be affected by any political, economic, or philosophical influences?
- 6. In your response to Senate Questionnaire Question 24, you stated you would recuse yourself "from all cases involving my law firm for a significant period of time."
  - a. Can you please describe your anticipated recusal policy towards your current law firm with greater specificity?
  - b. In light of these substantial contributions made during your selection and vetting process, will you adopt a different recusal policy with respect to Mr. Kemp and Mr. Jones than the recusal policy you will take with respect to your law firm? If not, please explain. If so, please describe the difference with specificity.
- 7. Your questionnaire says that you have been sole counsel in one trial, but in your hearing you said that you have tried several cases on your own. Will you please clarify this discrepancy?
- 8. You indicated to the Committee during your hearing that you would, if confirmed, faithfully apply precedent to any cases that came before you. You also told Senator Lee that you "cannot count myself as a scholar of judicial precedent".
  - a. Will you please explain to the Committee how you will apply precedent to the cases before you?
  - b. How will you determine which precedent to apply?
- 9. In your hearing, you told Senator Hirono that your federal criminal law experience is extremely limited and that you would need to "refamiliarize myself with the Federal rules of criminal procedure".
  - a. Please provide the dates you participated in the California Pro Bono Project and the extent of your duties.
  - b. Please explain the duties you performed while at the Ventura County District Attorney's Office during the summer of 1995, after your first year of law school.

- c. How will you prepare yourself to handle the criminal cases that would come before you? Please be specific with regard to each phase of the criminal justice system.
  - d. What factors will you consider when sentencing a criminal defendant?
  - e. Please describe your familiarity and experience with Sentencing Guidelines. How will you use them, if confirmed?
10. Do you believe the death penalty is an appropriate form of punishment? If called upon to do so, would you have any personal objection to imposing this sentence? Please explain your response.
11. During your hearing, I asked you about the law review article you wrote in law school and I still have some follow-up questions regarding that article. First, I asked you what your current view of physician-assisted suicide was. You said your “experience as a litigator has given me a completely different perspective than many of those that I think I have articulated in that piece”. This did not clearly answer my question. What are your current views on physician-assisted suicide—are they the same ones you held when you wrote your law review article or have they changed? If they have changed, please elaborate.
12. Do you believe the right to assisted-suicide should be limited to those who are terminally ill?
- a. If not, please explain to who else it should extend.
  - b. If so, please explain why it should not be extended to other suffering individuals.
13. In your conversation with Senator Lee regarding substantive due process rights, you said you “would apply that precedent.” Please elaborate – What is your understanding of the substantive due process rights recognized by the Supreme Court of the United States?
14. As has become much more common in the legal profession, many of your cases settled before going to trial. It’s no secret that attorneys use the pre-trial litigation stage as leverage to pressure parties towards settlement. I am not necessarily criticizing this approach. My question for you is how will you transition from a law practice where you settled almost all of your cases to presiding as a judge where you will need to oversee the process as a neutral arbiter? In my mind those are two very different mindsets.
15. What is the most important attribute of a judge, and do you possess it?
16. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?



17. In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?
18. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?
19. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?
20. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.
21. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?
22. What is your understanding of the workload in the District of Nevada? If confirmed, how do you intend to manage your caseload?
23. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?
24. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?
25. Please describe with particularity the process by which these questions were answered.
26. Do these answers reflect your true and personal views?

**Questions for the Record**

Hearing: Nominations

April 24, 2013

Submitted by Senator Amy Klobuchar

**Questions for Mr. Raymond Chen:**

1. If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?
2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?
3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?

**Questions for the Record**

Hearing: Nominations

April 24, 2013

Submitted by Senator Amy Klobuchar

**Questions for Ms. Jennifer Dorsey:**

1. If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?
2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?
3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?

## Nominations Hearing, April 24, 2013

### Questions for the Record from Senator Lee

#### Questions for Jennifer Dorsey

1. You served as a judicial extern for Judge Stephen Reinhardt on the Ninth Circuit Court of Appeals. Do you consider him a judicial role model?
2. In a law review note you wrote in 1997, you stated that Judge Reinhardt is “often deemed the most liberal judge in the federal judiciary.” If confirmed, would you seek to likewise establish a reputation as one of the most liberal judges in the federal judiciary?
3. In the law review note you wrote in 1997, you stated: “A refusal by the Court to legalize the practice of physician-assisted suicide will not sit well with contemporary constitutional jurisprudence—particularly the decisions in *Roe*, *Casey*, *Cruzan*, and *Romer*. In these cases, the Court was willing to forge ahead to create a just outcome without regard to the usual decisional restraints.” In your law review note, you use the term “just results” or “just outcome” a few times.
  - a. What role do judges have in ensuring that the result or outcome of a particular decision is just, and how should judges go about determining which result is just and which is unjust?
4. Elsewhere in your law review note, you write: “As *Roe*, *Cruzan* and *Romer* illustrate, when public policy and sentiment dictate, just results follow. In light of these decisions, the Court’s recognition of the right to die with physician assistance would be in good company.”
  - a. As it turns out, the position you advocated for in your law review note was rejected by the Supreme Court. Do you repudiate the reasoning you used in your law review note?
  - b. If not, would it be fair to say that although as a judge you would follow the Supreme Court’s precedent, your own personal constitutional jurisprudence is at odds with that of a majority of the Supreme Court?
5. In your law review note, you discuss Justice Scalia’s approach (as embodied in statements he had made) to the issue of physician assisted suicide. You conclude that he would be unlikely to vote in favor of a ruling that struck down state laws banning physician suicide. Your view, as expressed in the article, is that (contrary

to Justice Scalia's position) courts should in fact strike down laws banning physician assisted suicide. You characterize Justice Scalia's position—with which you disagree—as one that finds support “in doctrines of judicial restraint and enumerated rights.” It seems plain from reading your law review note that you consider the doctrines of “judicial restraint and enumerated rights” to be subservient to “just outcomes.”

- a. Do you retract and disavow your law review note, and if not, how can we conclude that you would prioritize the judicial restraint and the constitutional doctrine of enumerated rights given your criticism of those doctrines in your law review note?
6. Your biography evidence little experience in the courtroom. As I understand it, your questionnaire describes your legal work as pre-litigation preparation and research, discovery, motion practice and trial or other resolution. You state that you have participated in six trials. And you have no criminal experience.
  - a. Do you have any other legal experience of which the Committee should be aware and which you believe would prepare and qualify you to be a federal judge?
7. What role do the text and original meaning of a constitutional provision play in interpreting the Constitution?
8. What role does our Constitution's federalist structure—its enumerated powers doctrine and reservation of rights to the states—play in interpreting Constitutional provisions that affect federal powers?
  - a. Are there government powers that are exclusively the province of the states, and if so, which ones?
9. How would you decide a case in which there is no precedent on point and the litigant has asserted a claim based on a novel theory of constitutional law?
  - a. Would you look to sources outside the text of the Constitution in deciding such a case?
10. Justice Scalia has written that, “The meaning of terms on the statute books ought to be determined, not on the basis of which meaning can be shown to have been understood by a larger handful of the Members of Congress; but rather on the basis of which meaning is (1) most in accord with context and ordinary usage, and thus most likely to have been understood by the whole Congress which voted on the words of the statute (not to mention the citizens subject to it), and (2) most

compatible with the surrounding body of law into which the provision must be integrated.”<sup>1</sup>

- a. Do you agree with this approach and why or why not?

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<sup>1</sup> *Green v. Bock Laundry Mach. Co.*, 490 U.S. 504, 528 (Scalia, J., concurring).

**Response of Raymond T. Chen  
Nominee to be United States Circuit Judge for the Federal Circuit  
to the Written Questions of Senator Ted Cruz**

Judicial Philosophy

**Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.**

Response: My judicial philosophy would be best characterized as an unwavering commitment to the rule of law. Regardless of personal views, a judge is bound by the applicable statutes and precedent, and must apply the law in a consistent, impartial manner. Furthermore, an appellate judge may not remake the record created below or substitute his views for those of the lower tribunal on a fact finding.

I have not sufficiently analyzed the philosophies of the Supreme Court justices who served on these particular Courts to single out any one as analogous to my own conception of a judge's role. At my hearing, I identified Judge Learned Hand as a judicial role model because of his insistence on judicial restraint as well as his contributions to patent law.

**Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?**

Response: When interpreting the Constitution, a court applies the established tools of interpretation set forth by the Supreme Court. In several cases, including *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court has recognized the need to interpret the terms in the Constitution as they were understood at the time of the Constitution's ratification.

**If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?**

Response: If I am fortunate enough to be confirmed as a Circuit Judge for the Federal Circuit, I would be bound by Supreme Court precedent and could not overrule it. I would also be bound by prior panel and *en banc* decisions of the Federal Circuit, which that court could overrule only when it is sitting *en banc*. Exceptional circumstances may warrant *en banc* review, such as when there are conflicting decisions in the court's precedent, or when there is strong evidence that the court's precedent is based on a misreading of a statute. Also, I would follow any intervening Supreme Court decision that overruled Federal Circuit precedent.

Congressional Power

**Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially**

**created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).**

Response: In *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528 (1985), the Supreme Court explained that the Constitution and the structure of the Federal government protect the States' sovereign powers. If confirmed, I would follow *Garcia*, as I would any Supreme Court precedent, regardless of my personal views.

**Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?**

Response: The Commerce Clause permits Congress to regulate three areas: (1) the channels of interstate commerce; (2) the instrumentalities of interstate commerce; and (3) activities that substantially affect interstate commerce. *See, e.g., Perez v. United States*, 402 U.S. 146, 150 (1971). If called upon to determine whether a statute exceeds Congress's Commerce Clause authority, I would faithfully follow all applicable precedent, including *United States v. Lopez*, 514 U.S. 549 (1995), and *United States v. Morrison*, 529 U.S. 598 (2000). In both cases, the Supreme Court ruled that Congress lacked the authority to regulate certain types of non-economic activity.

#### Presidential Power

**What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?**

Response: In *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), the Supreme Court held that the President's ability to issue an executive order "must stem either from an act of Congress or from the Constitution itself." *Id.* at 585. Justice Jackson's concurrence provided a framework that courts continue to apply in assessing the validity of an executive order. *Id.* at 635-38. If confirmed, I would follow that precedent and other Supreme Court and Federal Circuit precedent outlining the limits of Presidential power.

#### Individual Rights

**When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?**

Response: The Supreme Court held that the Due Process Clause protects fundamental rights and liberties that are "objectively, 'deeply rooted in this Nation's history and tradition,'" and "'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed[.]'" *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997). Included among those fundamental rights are the right to marry, to have children, to marital privacy, and to bodily integrity. *Id.* at 720.



**When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?**

Response: Under the Equal Protection Clause, strict scrutiny applies “when a statute classifies by race, alienage, or national origin.” *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 440 (1985). The same is true for state laws that infringe personal rights protected by the Constitution. *Id.* Intermediate scrutiny applies to classifications regarding gender and illegitimacy, because such classifications “bear[] no relation to ability to perform or contribute to society.” *Id.* at 441.

**Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).**

Response: I do not have a personal view or expectation as to whether, within a certain time frame, the use of racial preferences in public higher education will continue to be necessary. If confirmed, and called upon to confront this issue, I would follow *Grutter*, as I would with any binding precedent, regardless of my own views.

**Response of Raymond T. Chen**  
**Nominee to be United States Circuit Judge for the Federal Circuit**  
**to the Written Questions of Senator Chuck Grassley**

1. At your confirmation hearing I asked questions pertaining to the Whistleblower Protection Act (WPA). I appreciated your taking the time to familiarize yourself with some of these issues prior to the hearing. While in *White v. Department of Air Force*, 391 F.3d 1377 (2004), the Federal Circuit appears to have backed off of the “irrefragable proof” standard annunciated in *LeChance v. White*, 174 F.3d 1378 (1999), I have concerns that the irrefragable proof standard has not been completely extinguished.

- a. In *White*, the Federal Circuit used a formulation of gross mismanagement that could cause confusion. The Court held that “for a lawful agency policy to constitute ‘gross mismanagement,’ an employee must disclose such serious errors by the agency that a conclusion the agency erred is not debatable among reasonable people.” In your understanding of *White*, are disclosures of “gross mismanagement” subject to a higher standard than the reasonable belief standard applied to other disclosures? Please review any applicable precedent in addressing this question.

Response: One of the elements that an aggrieved employee must show to prove that a federal agency violated the Whistleblower Protection Act (WPA) is that the aggrieved employee made a disclosure protected under the WPA. The Act defines a protected disclosure as any disclosure the employee reasonably believes evidences “(i) a violation of any law, rule, or regulation, or (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.” 5 U.S.C. § 2302(b)(8). The protected disclosure standard thus has two requirements: (1) a reasonable belief by the employee, and (2) a wrongdoing by an agency. The Federal Circuit, in *White v. Department of Air Force*, 391 F.3d 1377 (Fed. Cir. 2004), did not state that the reasonable belief requirement changes with the type of alleged wrongdoing, but, in focusing on the meaning of “gross mismanagement” in the context of an agency policy dispute, the opinion contemplates that each statutory item of wrongdoing has its own meaning.

In *White*, which dealt with whether an agency policy constituted “gross mismanagement,” the Federal Circuit articulated the test for a protected disclosure as follows: “could a disinterested observer with knowledge of the essential facts known to and readily ascertainable by the employee reasonably conclude that the actions of the government evidence gross mismanagement?” *Id.* at 1381 (internal quotation marks omitted). The court noted that legitimate differences in opinion as to the wisest policy choice for an agency do not rise to the level of “gross mismanagement.” The court went on to hold that a disputed, but lawful, agency

policy constitutes “gross mismanagement” when the error in policy “is not debatable among reasonable people.” *Id.* at 1382.

The non-debatable requirement for gross mismanagement does not apply to all categories of wrongdoing listed in section 2302(b)(8). For example, *White* points out that “[t]his non-debatable requirement does not, of course, apply to alleged violations of statutes or regulations.” *Id.* at 1382 n.2. Likewise, the non-debatable requirement is not part of the standard for a disclosure of a substantial and specific danger to public health or safety. See *Chambers v. Department of the Interior*, 515 F.3d 1362, 1368-69 (Fed. Cir. 2008).

- b. In your understanding of Federal Circuit precedent, is there any context where a whistleblower would be required to rebut by “irrefragable proof” the “presumption that public officers perform their duties correctly, fairly, in good faith, and in accordance with the law and governing regulations”?**

Response: I am not aware of any Federal Circuit precedent, since the 2004 *White* opinion, discussing an “irrefragable proof” standard in the whistleblower protection context. *White* explained that a whistleblower is not required under the WPA to present irrefragable proof that agency officials did not perform their duties correctly.

- c. Do you believe “substantial evidence” would be a more appropriate standard in this context for whistleblower cases?**

Response: I do not have an opinion as to what the appropriate evidentiary standard should be in this context. If confirmed, I would follow the provisions provided in the WPA, as well as the amendments to the WPA set forth in the Whistleblower Protection Enhancement Act (WPEA) enacted last year. Likewise, I would be bound by any applicable precedent that was not overruled by the WPEA.

- 2. What is the most important attribute of a judge, and do you possess it?**

Response: Of the many important attributes of a judge, I believe the most important is fidelity to the rule of law. A judge may not substitute his own views for that of Congress or governing precedent. I believe I possess this attribute.

- 3. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: A judge should be respectful, patient, and courteous to litigants and fellow judges. A judge should also maintain an open-mind and fully understand and weigh the competing points of view before rendering a decision. I believe I meet this standard.

4. **Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes.

5. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Under the doctrine of constitutional avoidance, a court should avoid deciding a constitutional issue if the case can be resolved on a different basis. A federal statute is presumed to be constitutional and should not be struck down unless it violates a provision of the Constitution or if Congress clearly exceeded its constitutional powers.

6. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: If the matter concerned the interpretation of a statute, I would first and foremost look to the text of the statute itself. If the statute is clear, then I would follow its plain meaning. I would also look to related statutory provisions that are part of the same Act to confirm that the same terms are used consistently and also that no terms are rendered superfluous. If the statutory text was ambiguous, I would apply accepted canons of statutory construction, including reviewing the legislative history. I would also review decisions relating to the issue by other circuit courts or district courts for their persuasive value.

7. **In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution? Please explain**

Response: No, it is not proper for judges to seek to reconcile our Constitution with foreign law or the views of the world community. The Supreme Court has, on occasion, consulted English common law in ascertaining the meaning of certain constitutional provisions.

8. **Under what circumstances, if any, do you believe an appellate court should overturn precedent within the circuit? What factors would you consider in reaching this decision?**

Response: An appellate court is bound by its prior panel and *en banc* decisions, which the court can overrule only when it is sitting *en banc*. *En banc* review may be warranted in rare and exceptional circumstances, such as when there are conflicting decisions in the court’s precedent, or when there is strong evidence that the court’s precedent is based on a misreading of a statute. Also, an appellate court must overturn its precedent if an intervening Supreme Court decision requires it to do so.

- 9. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: I can assure the Committee that if confirmed I would faithfully follow the applicable precedent and text of the law. My entire career has been apolitical. I have not served in political positions in the government, nor have I been involved in any political campaigning or advocacy. And political ideology or motivation would have no role in my decision-making as a judge.

- 10. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: It is essential for the administration of justice and public confidence in the court system that judges treat all parties equally, fairly, and respectfully. Judges and lawyers should also perform their respective roles without regard to their personal views. I believe that my professional reputation, which I have developed while working in both the government and private practice, reflects a commitment to those principles. If confirmed, I would continue to adhere to those principles and apply the law in a neutral, impartial manner.

- 11. You have spent most of your legal career as an advocate for the United States Government. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?**

Response: If confirmed as a judge, my role would be to apply the governing law to the facts of a case in a neutral, impartial manner. I would study the record and briefs before me to ensure that I understand each side's arguments. For guidance, I would look to all applicable legal authority, including the Constitution, statutes, and precedent. I understand that the role of a judge is very different from that of an advocate, in the sense that an advocate is necessarily outcome-oriented, whereas a judge must keep an open mind. I anticipate that the most difficult part of the transition for me will be to quickly become knowledgeable in the non-patent areas of the Federal Circuit's jurisdiction.

- 12. Do you think that collegiality is an important element of the work of the Federal Circuit? Please explain how you would approach your work and interaction with colleagues on the Court.**

Response: Yes, I believe collegiality is one of the most important attributes of a circuit judge. If confirmed, I would approach my work in the same way I have conducted myself throughout my career, by carefully considering the views of the other judges on the same panel, engaging in respectful discussions, and striving for consensus.

- 13. At your hearing, you and Senator Lee had a conversation about the law providing a “right answer” in cases. At a speech in 2005, Justice Scalia said, “I think it is up to the judge to say what the Constitution provided, even if what it provided is not the best answer, even if you think it should be amended. If that’s what it says, that’s what it says.”**

- a. Do you agree with Justice Scalia?**

Response: Yes, I agree. I understand Justice Scalia to be explaining that a judge’s role is to faithfully apply the law as it is, not as it should be in the eyes of the judge.

- b. In your view, is it possible in a case to arrive at the “right answer” even though it might not be the “best answer?”**

Response: Yes, it is possible that the law may require a “right answer” for resolving a dispute that differs from what the judge believes is the “best answer.” In that situation, a judge is bound by that “right answer” even if the judge personally disagrees with it.

- c. Do you believe a judge should consider his or her own values or policy preferences in determining what the law means? If so, under what circumstances?**

Response: No. When determining what the law is, a judge must always avoid injecting his or her own personal policy preferences. The legislature retains the role of designing laws based on its policy judgments, and a judge may not second-guess those judgments.

- 14. What is your judicial philosophy on applying the Constitution to modern statutes and regulations?**

Response: My philosophy is that constitutional interpretation follows the same mode of analysis regardless of whether the challenged statute or regulation is new or old. I would follow any controlling Supreme Court or Federal Circuit precedent on the particular issue. If no controlling precedent exists, I would look to the text of the applicable

constitutional provision to discern what its plain meaning is and also consider it in the context of the Constitution as a whole. I would also follow the established methodology for interpreting the Constitution set forth by the Supreme Court. If any other circuit courts have opined on the matter, I would also consult those decisions for their persuasive value.

**15. Some people refer to the Constitution as a “living” document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

Response: If confirmed as an appellate judge, I would follow the methodology set forth in governing Supreme Court precedent for resolving a constitutional question. The Constitution itself changes only by constitutional amendment.

**16. In *Brown v. Entertainment Merchants Association*, Justice Breyer supplemented his opinion with appendices comprising scientific articles on the sociological and psychological harm of playing violent video games. When, if ever, do you think it is appropriate for appellate judges to conduct research outside the record of the case?**

Response: If confirmed as an appellate judge, I would not reach a decision based on evidence developed outside the record of a case.

**17. Please describe with particularity the process by which these questions were answered.**

Response: I received these questions on May 1, 2013, and I drafted my answers to them. On May 3, 2013, I sent my draft to an attorney at the Department of Justice for review and made revisions to the draft after receiving comments.

**18. Do these answers reflect your true and personal views?**

Response: Yes.

**Response of Raymond T. Chen**  
**Nominee to be United States Circuit Judge for the Federal Circuit**  
**to the Written Questions of Senator Amy Klobuchar**

- 1. If you had to describe it, how would you characterize your judicial philosophy?  
How do you see the role of the judge in our constitutional system?**

Response: My judicial philosophy would be best characterized as an unwavering commitment to the rule of law. Regardless of personal views, a judge is bound by the applicable statutes and precedent, and must apply the law in a consistent, impartial manner. Furthermore, an appellate judge may not remake the record created below or substitute his views for those of the lower tribunal on a fact finding.

Our constitutional system is based on a separation of powers between the branches of government, and the judiciary's role in reviewing the decisions of the democratically elected branches is a limited one. Moreover, it is a judge's role to faithfully apply the laws enacted by Congress regardless of a judge's personal policy preferences.

- 2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

Response: It is essential for our administration of justice and public confidence in the court system that judges treat all parties equally, fairly, and respectfully. I believe that my professional reputation that I have developed while working in both the government and private practice reflects a commitment to those principles. If confirmed, I would continue to adhere to those principles and apply the law in a neutral, impartial manner.

- 3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

Response: The integrity of our judicial system depends on predictability and stability in the rule of law. It is therefore imperative that judges bind themselves to the doctrine of *stare decisis*. If confirmed as a circuit court judge, I would be bound by all Supreme Court precedents as well as prior panel and *en banc* decisions by the Federal Circuit. Only in exceptional circumstances should an appellate court overturn its prior precedent through *en banc* review.



**Response of Jennifer Dorsey  
Nominee to be United States District Court Judge for the District of Nevada  
to the Written Questions of Senator Ted Cruz**

**Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.**

Response: I believe that judges should be fair, impartial, and respectful to the litigants, hardworking, and always well prepared. A judge should remain mindful of the judiciary's limited role in our Constitutional system to apply the well-researched law to the facts of each particular case. I have not studied Supreme Court history with an eye toward the judicial philosophies of the Justices, so I cannot analogize my beliefs to those of any one jurist.

**Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?**

Response: When interpreting the text of the Constitution, a district court judge should look to binding precedent from the United States Supreme Court and his or her Court of Appeals. If the answer cannot be determined from precedent or analogous cases, a judge should look to the text of the Constitution, employing the plain and ordinary meaning of its express language. If the plain meaning cannot be determined or is unclear, original intent may be helpful in ascertaining the meaning of Constitutional provisions.

**If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?**

Response: Unless the precedent is overturned by the United States Supreme Court or the Ninth Circuit Court of Appeals, I would be bound to follow it and have no authority to overrule it.

**Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).**

Response: As a judicial nominee, I do not feel it would be appropriate for me to express a personal opinion about a precedent of the United States Supreme Court. Supreme

Court precedent is binding on district court judges. If confirmed as a district court judge, I would apply all binding legal precedent, including *Garcia*, and my personal opinion, if any, would play no role in my decision.

**Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?**

Response: The United States Supreme Court has identified three broad categories of activity that Congress may regulate under the Commerce Clause power: “(1) use of the channels of interstate commerce, (2) the instrumentalities of interstate commerce, or persons and things in interstate commerce, and (3) activities that ‘substantially affect’ interstate commerce.” *Gonzales v. Raich*, 545 U.S. 1, 22 (2005) (Scalia, J., concurring in the judgment) (quoting *Perez v. U.S.*, 402 U.S. 146, 150 (1971)). In *United States v. Lopez*, 514 U.S. 549 (1995), and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court articulated limitations on the reach of the Commerce Clause power to certain specific non-economic activities. If confirmed as a district court judge, I would follow all applicable Supreme Court and Circuit Court precedent in evaluating a Commerce Clause question.

**What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?**

Response: As the United States Supreme Court stated in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952), the President's power to issue executive orders or actions “must stem either from an act of Congress or from the Constitution itself.” These limits are judicially enforceable.

**When do you believe a right is “fundamental” for purposes of the substantive due process doctrine?**

Response: The Supreme Court has held that rights are “fundamental” for purposes of the substantive due process doctrine when “deeply rooted in this Nation's history and tradition” and “implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.” *Washington v. Glucksberg*, 521 U.S. 702, 721 & 727 (1997) (internal citations and quotation marks omitted).

**When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?**

Response: The Supreme Court has held that a classification should be subjected to heightened scrutiny under the Equal Protection Clause when it targets a suspect class (e.g., race, alienage, national origin, or gender) or involves a fundamental right.

**Do you “expect that [15] years from now, the use of racial preferences will no longer be necessary” in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).**

Response: I have no specific expectation about the future use of racial preferences in public higher education. If confirmed, I would apply *Grutter* and any other binding Supreme Court precedent.

**Response of Jennifer A. Dorsey  
Nominee to be United States District Court Judge for the District of Nevada  
to the Written Questions of Senator Chuck Grassley**

- 1. I have some concerns regarding several political contributions you and other members of your law firm made during the approximate time frame when you were being considered for this nomination. There is nothing wrong with donating to political campaigns. However, the timing of these contributions raises some questions that I would like to clarify.**

**According to public records, you contributed \$2,500 to a U.S. Senate campaign on March 31, 2012. This money was then returned to you on April 30, 2012. This donation coincided, roughly, with the consideration of your nomination.**

- a. Did you attend a campaign function in connection with that contribution?**

Response: Yes.

- b. What were the circumstances surrounding your initial contribution?**

Response: I attended a campaign function on March 30, 2012, which included a concert by Carole King. To the best of my recollection, the suggested donation amount for attending the event was \$2,500, and I made my donation before entering the event.

- c. At the time, were you aware that your law partner Will Kemp also made a \$2,500 contribution to the same U.S. Senate campaign that same day? If so, when did you become aware of it and what were the circumstances of your knowledge?**

Response: No. I was aware he attended this event, but I was not aware of whether or when he had made a contribution or for what amount.

- d. Your March 31, 2012 contribution was returned to you one month later on April 30, 2012. What were the circumstances surrounding your donation's return? Were you given an explanation as to why it was returned to you? If so, please describe fully.**

Response: In or about mid-April, 2012, I was informed by the campaign that my donation was being returned to me because Senator Reid's office was going to begin

to consider whether I might be an appropriate candidate for a district court nomination.

**2. The day after your donation was returned to you, Mr. Kemp donated \$100,000 to a Democratic Senate Political Action Committee (PAC).**

- a. Were you aware that Mr. Kemp intended to make a contribution to the PAC before it was transmitted on May 1, 2012?**

Response: No.

- b. When did you become aware Mr. Kemp intended to make a donation to the PAC? What were the circumstances and context? Please describe fully.**

Response: I was not aware that Mr. Kemp intended to make a donation to the PAC.

- c. Did Mr. Kemp ever communicate to you the reasons motivating his decision to make the donation? If so, what did Mr. Kemp communicate to you?**

Response: No.

**3. Two weeks later, a different law partner, Mr. Jones, donated \$50,000 to the same Democratic Senate Political Action Committee.**

- a. Were you aware that Mr. Jones intended to make a contribution to the PAC before it was transmitted?**

Response: No.

- b. When did you become aware Mr. Jones intended to make a contribution to the PAC? What were the circumstances and context? Please describe fully.**

Response: I was not aware that Mr. Jones intended to make a contribution to the PAC.

- c. Did Mr. Jones ever communicate to you the reasons motivating his decision to make the contribution? If so, what did Mr. Jones communicate to you?**

Response: No.

4. **Do you have any reason to believe or suspect that these substantial contributions were made in an effort to assist you in obtaining a nomination to the federal bench? Please fully explain your response.**

Response: No.

5. **What assurances can you give this committee that, should you be confirmed, you will be able to eliminate any potential biases and influences, and that your courtroom decisions will not be affected by any political, economic, or philosophical influences?**

Response: I fully recognize that biases and influences have no place in judicial decision-making, and that courtroom decisions should not be affected by political, economic, or philosophical influences. If confirmed, I would faithfully apply the controlling law to the facts without regard for, or consideration of, any bias or influence—political, economic, philosophical, or otherwise.

6. **In your response to Senate Questionnaire Question 24, you stated you would recuse yourself “from all cases involving my law firm for a significant period of time.”**

- a. **Can you please describe your anticipated recusal policy towards your current law firm with greater specificity?**

Response: If confirmed, I would recuse myself from all matters in which my law firm represents a party for at least several years. And even after this period, in any matter involving my law firm, I would consult the Code of Conduct for United States Judges, the Ethics Office of the Administrative Office of the U.S. Courts, and any applicable recusal statutes, and I would recuse myself whenever necessary to avoid even the appearance of a conflict of interest.

- b. **In light of these substantial contributions made during your selection and vetting process, will you adopt a different recusal policy with respect to Mr. Kemp and Mr. Jones than the recusal policy you will take with respect to your law firm? If not, please explain. If so, please describe the difference with specificity.**

Response: No. Any recusal policy I adopt for the firm will apply to Mr. Kemp and Mr. Jones.

7. **Your questionnaire says that you have been sole counsel in one trial, but in your hearing you said that you have tried several cases on your own. Will you please clarify this discrepancy?**

Response: Thank you for the opportunity to clarify my response. What I meant to say was that I had tried or arbitrated several cases on my own, and I have consistently had sole or primary responsibility for various phases of the complex litigation matters that I work on. I apologize for any confusion.

- 8. You indicated to the Committee during your hearing that you would, if confirmed, faithfully apply precedent to any cases that came before you. You also told Senator Lee that you “cannot count myself as a scholar of judicial precedent”.**

- a. Will you please explain to the Committee how you will apply precedent to the cases before you?**

Response: My statement was intended to directly respond to Senator Lee’s inquiry into which federal judge I consider to be a role model. The “precedent” I was (inartfully) referencing was the judicial philosophy of particular federal judges—a topic in which I do not consider myself a scholar—not legal precedent. If confirmed, all legal issues before me will be carefully and thoroughly researched to ensure that my decisions are based on the faithful application of legal precedent.

- b. How will you determine which precedent to apply?**

Response: I intend to determine which precedent to apply by reviewing the submissions of the parties and conducting thorough, independent legal research after obtaining a full understanding of the facts of each particular case.

- 9. In your hearing, you told Senator Hirono that your federal criminal law experience is extremely limited and that you would need to “refamiliarize myself with the Federal rules of criminal procedure”.**

- a. Please provide the dates you participated in the California Pro Bono Project and the extent of your duties.**

Response: I was a law clerk for the law firm of Totaro & Shanahan during my last two years of law school, from approximately January 1996 through February 1997. Totaro & Shanahan served as counsel through the California Appellate Project, which provides court-appointed appellate attorneys for indigent defendants. Under the supervision of Totaro & Shanahan attorneys, I evaluated trial records for appellate issues and drafted appellate briefs.

**b. Please explain the duties you performed while at the Ventura County District Attorney's Office during the summer of 1995, after your first year of law school.**

Response: As an extern at the Ventura County District Attorney's Office, I had the opportunity to research, draft, and prepare draft responses to a variety of criminal pretrial motions, observe hearings and trials, and assist attorneys in the preparation of cases for hearing and trial.

**c. How will you prepare yourself to handle the criminal cases that would come before you? Please be specific with regard to each phase of the criminal justice system.**

Response: I have begun to observe criminal proceedings at the federal district court and have spoken to some of our federal district court judges regarding their procedures and resources for criminal matters. I have started studying the written materials available through the Federal Judicial Center and, if confirmed, I intend to take advantage of the educational programs that the Center offers to the judiciary and utilize the criminal-law-and-procedure knowledge base and experience of mentors on the bench as appropriate. I will make arrangements to observe initial appearances before other judges including bail proceedings and detention hearings, as well as arraignments, plea proceedings, other pretrial hearings, trials, and sentencing. I will also immediately familiarize myself with the body of criminal statutes, including but not limited to the Speedy Trial Act, the Crime Victims' Rights Act, and the U.S. Sentencing Guidelines. I recognize that my criminal experience is lacking, and studying hard to become proficient in criminal law and procedure would be my immediate priority. I believe that my exposure to criminal law and procedure described above, although limited, and my career of complex civil litigation and appeals experience have given me a solid base on which to build. The same rules of evidence apply to both civil and criminal cases, and the same research, writing, and legal-analysis skills that I have been working to hone throughout my career will be essential to deciding every case, regardless of its nature.

**d. What factors will you consider when sentencing a criminal defendant?**

Response: When sentencing a criminal defendant I will consider all relevant factors required by the laws of the United States and binding precedent, specifically including those identified in 18 U.S.C. § 3553.

**e. Please describe your familiarity and experience with Sentencing Guidelines. How will you use them, if confirmed?**



Response: As my practice has been focused on complex civil litigation and appeals, I have not had the opportunity to work with the Sentencing Guidelines. However, I intend to immediately familiarize myself with the Sentencing Guidelines and give them substantial deference in sentencing decisions. Even though I understand that they are no longer mandatory, the Sentencing Guidelines serve a valuable purpose in promoting uniformity and predictability in criminal sentencing.

**10. Do you believe the death penalty is an appropriate form of punishment? If called upon to do so, would you have any personal objection to imposing this sentence? Please explain your response.**

Response: The United States Supreme Court has held that the death penalty is an appropriate form of punishment, with limited exceptions. If confirmed as a district court judge, I would faithfully apply that precedent, as I would any precedent.

**11. During your hearing, I asked you about the law review article you wrote in law school and I still have some follow-up questions regarding that article. First, I asked you what your current view of physician-assisted suicide was. You said your “experience as a litigator has given me a completely different perspective than many of those that I think I have articulated in that piece”. This did not clearly answer my question. What are your current views on physician-assisted suicide—are they the same ones you held when you wrote your law review article or have they changed? If they have changed, please elaborate.**

Response: I wrote that article approximately 17 years ago while I was a law student and shortly after the United States Supreme Court granted certiorari to review the Ninth Circuit and Second Circuit decisions in *Compassion in Dying v. State of Washington*, 79 F.3d 790 (1996), and *Quill v. Vacco*, 80 F.3d 716 (1996), respectively. The intent of the article was not to express any particular view on physician-assisted suicide, but to analyze the then-current state of the law on the subject and to address the potential rationales for, and some ramifications of, the United States Supreme Court’s ultimate ruling. My view on physician-assisted suicide at the time I drafted my article was that it was a timely and topical subject on which relatively little had been written.

I have not studied these issues since writing the article, and I do not have a current view on physician-assisted suicide except that the United States Supreme Court held in *Washington v. Glucksberg*, 521 U.S. 702, 728 (1997), that there is no fundamental liberty interest in physician-assisted suicide, which is binding precedent on the lower courts. If I were confirmed as a district court judge and presented with a case involving physician-assisted

suicide or any other issue, I would base my decision on the law, regardless of my personal views, if any.

**12. Do you believe the right to assisted-suicide should be limited to those who are terminally ill?**

Response: It is the role of the legislature, not the judiciary, to decide policy and make laws. If confirmed as a district court judge and presented with an issue regarding physician-assisted suicide, I would faithfully apply the controlling law and judicial precedent, without regard to my personal views, if any.

**a. If not, please explain to who else it should extend.**

Response: Please see my response above.

**b. If so, please explain why it should not be extended to other suffering individuals.**

Response: Please see my response above.

**13. In your conversation with Senator Lee regarding substantive due process rights, you said you “would apply that precedent.” Please elaborate – What is your understanding of the substantive due process rights recognized by the Supreme Court of the United States?**

Response: The United States Supreme Court has recognized substantive due process rights for those personal activities and decisions “deeply rooted in this Nation’s history and tradition” and “implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.” *Washington v. Glucksberg*, 521 U.S. 702, 721 & 727 (1997) (internal citations and quotation marks omitted). The Supreme Court has established an analytical framework for evaluating whether a right is a fundamental liberty interest protected by the Due Process Clause. If confirmed, I will follow that framework and all controlling substantive-due-process precedent from the United States Supreme Court and the Circuit Court.

**14. As has become much more common in the legal profession, many of your cases settled before going to trial. It’s no secret that attorneys use the pre-trial litigation stage as leverage to pressure parties towards settlement. I am not necessarily criticizing this approach. My question for you is how will you transition from a law practice where you settled almost all of your cases to presiding as a judge where you will need to**

**oversee the process as a neutral arbiter? In my mind those are two very different mindsets.**

Response: The roles and mindsets of judges and attorneys are very different: an attorney's job is to be an advocate, while a judge's role is to be a neutral arbiter who faithfully applies the law to the facts of each individual case. I am completely cognizant of this distinction and am confident in my ability to remain constantly mindful of it if confirmed.

**15. What is the most important attribute of a judge, and do you possess it?**

Response: A good judge requires many attributes, including the commitment to study and fairly apply the law to the facts of each case without bias or preconception, and a deep and abiding respect for the unique and limited role of the judiciary in our Constitutional system. I possess these attributes.

**16. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: A judge must be even-tempered, exceedingly hard working, and treat everyone with dignity and respect. Yes, I believe I meet these standards.

**17. In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes.

**18. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: If presented with a statutory interpretation case of first impression, I would look first to the express language of the provision and give the text its plain and ordinary meaning. If ambiguity remains, I would examine the statute's context and purpose, and the use, meaning, and application of the same language in other statutory provisions within the same act. I would then consider decisions from other circuits and district courts.

**19. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: A statute enacted by Congress is presumed constitutional. A statute should only be invalidated when it can be determined that Congress clearly exceeded its powers or violated a Constitutional provision.

**20. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community," in determining the meaning of the Constitution? Please explain.**

Response: No, unless directed by the legal precedent of the United States Supreme Court or the applicable circuit court.

**21. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: In my career as a litigator, I have represented plaintiffs and defendants varying from large corporations to indigent, pro bono clients. And I have given each case and client my full effort and attention, regardless of my personal views. If I am fortunate enough to be confirmed, I would give the same respect and attention to every litigant and party and decide cases without regard to any personal view that I might hold because a judge must be fair and impartial to all who appear before the court.

**22. What is your understanding of the workload in the District of Nevada? If confirmed, how do you intend to manage your caseload?**

Response: It is my understanding that the district court judges in Nevada have a significant caseload. Throughout my practice, I have always had a heavy caseload and the responsibility for multiple complex litigation matters in various stages of the legal process. If fortunate enough to be confirmed, I would rely on that experience and employ the same strategies with respect to managing my docket. I would also consult with fellow judges to learn their best practices.

**23. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: Yes, I believe that judges play a key role in controlling the pace and conduct of litigation. If confirmed, I would enforce rules and deadlines, work with the magistrate

judges, hold status conferences as necessary, strive to make prompt rulings on motions, and use all other tools and resources at my disposal.

- 24. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?**

Response: If confirmed, I recognize the role of the judge is very different than that of an advocate, but the skills I have developed throughout my career, nonetheless, will be essential: diligent preparation, exhaustive research, and careful thought. For guidance, I will look to binding precedent from the United States Supreme Court and the Ninth Circuit Court of Appeals, and all applicable laws and rules of procedure.

I expect that the most difficult part of this transition will be the need to immediately handle a substantial docket that includes criminal matters. I will need to become quickly familiar with the cases on my docket and develop procedures and a process for managing that caseload. I intend to use other judges and court staff as the first resource for guidance on developing such procedures and processes.

- 25. Please describe with particularity the process by which these questions were answered.**

Response: I received these questions on May 1, 2013, and prepared my answers over the next several days. I reviewed them with an official from the Department of Justice before submitting them to the Committee.

- 26. Do these answers reflect your true and personal views?**

Response: Yes.

**Response of Jennifer A. Dorsey**  
**Nominee to be United States District Court Judge for the District of Nevada**  
**to the Written Questions of Senator Amy Klobuchar**

- 1. If you had to describe it, how would you characterize your judicial philosophy?  
How do you see the role of the judge in our constitutional system?**

Response: I believe that judges should be fair, impartial, and respectful to the litigants, hard working, and always well prepared. A judge should remain mindful of the judiciary's limited role in our Constitutional system to apply the well-researched law to the facts of each particular case and serve as a check and balance on the other branches of government.

- 2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

Response: During my career, I have represented plaintiffs and defendants, varying from large corporations to indigent, pro bono clients. And I have given each case and client my full effort and attention. If I am fortunate enough to be confirmed, I intend to give the same respect and attention to every litigant and treat them fairly regardless of political beliefs, their economic status or financial means, or their posture in the case.

- 3. In your opinion, how strongly should judges bind themselves to the doctrine of *stare decisis*? How does the commitment to *stare decisis* vary depending on the court?**

Response: *Stare decisis* – the commitment to and faithful application of binding precedent – is the foundation of predictability and consistency in our legal system. Although the United States Supreme Court and Circuit Courts may reconsider their own precedent in limited circumstances, district court judges are bound by the principles of *stare decisis*.

**TESTIMONY BEFORE THE COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE**

**FOR THE HEARING ON THE NOMINATION OF**

**RAYMOND T. CHEN,  
TO BE UNITED STATES CIRCUIT JUDGE FOR THE  
UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

**APRIL 24, 2013**

**BY THE**

**NATIONAL ASIAN PACIFIC AMERICAN BAR ASSOCIATION**

The National Asian Pacific American Bar Association (NAPABA) submit this testimony to extend its support for Raymond T. Chen, nominee to be United States Circuit Judge for the United States Court of Appeals for the Federal Circuit. Mr. Chen has the experience, intellectual capacity, integrity, and judicial temperament to serve as an exceptional circuit court judge.

NAPABA is the national bar association representing the interests of Asian Pacific American attorneys, judges, law professors, and law students. NAPABA represents the interests of over 40,000 attorneys nationally and over 60 local Asian Pacific American bar associations. Its members include solo practitioners, large law firm lawyers, corporate counsel, legal service and nonprofit attorneys, judges, and lawyers serving at all levels of government. Through its national network of affiliates and committees, NAPABA provides a strong voice for increased diversity of federal and state judiciaries, advocates for equal opportunity in the workplace, seeks to eliminate anti-Asian crime and anti-immigrant sentiment, and promotes professional development of minorities in the legal profession.

Out of the approximately 175 active federal appellate court judges, there are currently only two who are Asian Pacific American.<sup>1</sup> If the number of Asian Pacific American federal appellate court judges approximated the percentage of Asian Pacific American residents nationwide, then there should be 11-12 Asian Pacific American federal appellate court judges.

If confirmed, Mr. Chen would also become the first Asian Pacific American to serve on the Federal Circuit in over 25 years. Given the number of Asian Pacific Americans practicing in the field of intellectual property, having an Asian Pacific American serve on this Court is particularly important to NAPABA.

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<sup>1</sup> Sri Srinivasan had his confirmation hearing for the D.C. Circuit on April 10, 2013. NAPABA urges the Senate to confirm Mr. Srinivasan promptly.

Testimony of the National Asian Pacific American Bar Association Regarding Raymond T. Chen  
Page 2  
April 24, 013

Mr. Chen has had a distinguished career and would be able to make an immediate mark on the Court. Since 2008, Mr. Chen has served as the Deputy General Counsel for Intellectual Property Law and Solicitor for the U.S. Patent & Trademark Office ("PTO"). In that role, he has overall responsibility for supervising all litigation handled by the PTO. In addition, he coordinates and participates in discussions with other parts of the federal government in determining the positions that should be taken by the government in intellectual property litigation throughout the country. Prior to his appointment as Solicitor, Mr. Chen served as an Assistant Solicitor in the Solicitor's Office for 10 years. In those positions, Mr. Chen has argued over 25 appeals before the Federal Circuit, and submitted briefs on behalf of the PTO in countless other cases. Mr. Chen also served as a Senior Technical Assistant for the Federal Circuit from 1996 to 1998, where he helped the Federal Circuit Court Judges with research issues and edited opinions for legal and technical accuracy. Thus, through these various positions, Mr. Chen has developed an intimate knowledge of the Federal Circuit and the issues facing that court.

Mr. Chen is also well-regarded in the profession. He received the Attorney of the Year Award General at the PTO's Office of the Solicitor in 2002, a Gold Medal Award from the U.S. Department of Commerce in 2011, and a Bronze Medal Award from the Commerce Department in 2005. He is a frequent speaker and lecturer on intellectual property law issues, including seminars at Stanford Law School, Duke University School of Law, Howard University School of Law, Catholic University School of Law, Suffolk University Law School, Rutgers Law School, University of Maryland School of Law, University of Washington School of Law, American University Washington College of Law, George Washington University Law School, and Cardozo Law School. Significantly, Mr. Chen also has participated in international exchanges to promote the protection of intellectual property abroad. Toward that end, he has spoken in China, Germany, Japan, and Thailand.

Along with his professional accomplishments, Mr. Chen has continued to take part in community activities. He is the Executive Advisor for the U.S. Patent & Trademark Office's Asian Pacific American Network. He is a frequent speaker at Asian Pacific American events, including panels organized by NAPABA or its local affiliate, the Asian Pacific American Bar Association of the Greater Washington D.C. Area. He also coaches a boys' basketball team in a recreational league, and helps in annual efforts to assist the homeless and children affected by war.

Like many American families, Ray's family immigrated to the United States to seek a better education and greater opportunities. Both of his parents obtained Ph.D.s in New York, and worked there for several years. During that time, Ray was born. The family later moved to Pasadena, California, where both parents worked at various times for Jet Propulsion Labs – his father as a guidance and control engineer and his mother as a software systems engineer. Growing up, Ray worked at McDonald's part-time and stayed one year after college to earn money for law school. His years in Southern California have made him a die-hard UCLA basketball fan (which he claims has led to the detriment of his mental health).



Testimony of the National Asian Pacific American Bar Association Regarding Raymond T. Chen  
Page 3  
April 24, 013

Raymond Chen would make an immediate contribution as a federal circuit court judge. His qualifications, integrity, intellect, and knowledge of the Federal Circuit are impeccable. Accordingly, the National Asian Pacific American Bar Association extend its strong support and urge for the speedy confirmation of Raymond T. Chen for the United States Court of Appeals for the Federal Circuit. Thank you for considering this testimony today.

## The Federal Circuit Bar Association

RESEARCH & BAR

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Stradley Ronon Stevens & Young, LLP

April 19, 2013

The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Chuck Grassley  
Ranking Member  
Committee on the Judiciary  
United States Senate  
135 Hart Senate Office Building  
Washington, D.C. 20510

Re: Nomination of Raymond T. Chen as Circuit Judge,  
U.S. Court of Appeals for the Federal Circuit

Dear Senators Leahy and Grassley:

We write to voice strong support for the nomination of Raymond T. Chen to fill a vacancy on the U.S. Court of Appeals for the Federal Circuit. We understand that the Senate Judiciary Committee will conduct a hearing on Mr. Chen's nomination this coming Wednesday, April 24, 2013.

The U.S. Court of Appeals for the Federal Circuit presently has two openings. With the new America Invents Act, we anticipate that the Federal Circuit's case load will grow. A favorable vote by the Judiciary Committee on Mr. Chen's nomination at the earliest possible date would greatly facilitate the work of this court. The court is essential to our nation's innovation and job creation through its review of patents, government contracts, trade disputes, and various other matters.

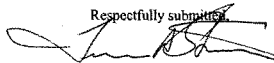
The Federal Circuit Bar Association is a national organization that supports the Federal Circuit and its related practice communities. Our members are from all parts of the country and seek to serve the court. To this end, we work to unite the different interests practicing before the Circuit and the tribunals which it reviews. The Association provides a forum for dialogue among the court, bar, government counsel, and private practitioner members. Government practitioner members have not participated in the preparation or submission of this letter.

Mr. Chen has long been an active member of the patent bar and our Association. He has been the Solicitor of the United States Patent and Trademark Office ("PTO") since 2008. Before then, Mr. Chen served as an Associate Solicitor at the PTO and on the technical staff of the United States Court of Appeals for the Federal Circuit, the court to which he has been nominated. Mr. Chen practiced law in California before working at the Federal Circuit. In addition to our Association, he is a member of the Federal Circuit's Advisory Council and the National Asian Pacific American Bar Association.

Many members of our Association have worked closely with Mr. Chen on a broad range of patent matters. We know from personal experience that Mr. Chen has the experience and expertise to perform at the highest level at the Federal Circuit. Mr. Chen also has extensive experience with and appreciation of the administration of the Federal Circuit. Mr. Chen's unique experience and skills will make him an excellent addition to the court.

If we can provide further information, please do not hesitate to contact me, [tstewart@stewartlaw.com](mailto:tstewart@stewartlaw.com), 202-466-1241, Robert K. Huffman, Chair of our Judicial Nominations Committee, [rhuffman@akingump.com](mailto:rhuffman@akingump.com), 202-887-4530, or James E. Brookshire, our Executive Director, [brookshire1@fedcirbar.org](mailto:brookshire1@fedcirbar.org), 202-558-2421.

Respectfully submitted,



Terence P. Stewart

April 19, 2013

The Honorable Patrick Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

The Honorable Charles Grassley  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Chairman Leahy and Senator Grassley:

We write in support of Ray Chen to be confirmed as a judge on the United States Court of Appeals for the Federal Circuit. Both of us have served as the Solicitor of the United States Patent and Trademark Office (USPTO), the position that Ray now holds. Both of us have worked closely with Ray for several years on a variety of matters. We know Ray very well, personally and professionally. As discussed below we strongly believe Ray has excellent knowledge of intellectual property law and appellate practice, has dedicated his career to public service and the improvement of the intellectual property system, has a judicial temperament, and is a person of unmatched integrity.

Ray is one of the best intellectual property lawyers in the country. He has argued dozens of cases before the Federal Circuit, and overseen hundreds of similar cases argued by his staff. In addition, Ray has worked with the Solicitor General of the United States on numerous intellectual property-related cases before the United States Supreme Court. Ray has also been vital in implementing two major patent statutes, the recent American Invents Act (2012) and the American Inventors Protection Act (1999).

Substantially all of Ray's legal career has been dedicated to public service and to the improvement of the intellectual property system. Ray has worked at the USPTO for fifteen years, and, prior to joining the USPTO, he served for four years at the Federal Circuit in a staff attorney position where he responsible for the legal and technical accuracy of Federal Circuit opinions in all areas of the Court's jurisdiction.

Ray has an excellent temperament, one particularly suited for serving the country as a judge. He approaches issues and cases one at a time, he is inclusive in listening to all views, he weighs the various arguments, and arrives at a position that is sound and reasoned. He is very well liked and respected by all who know him and work with him, including the large staff he supervises. He is equally well liked and respected by the attorneys against whom he and his staff have argued.

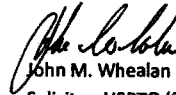
Finally, Ray is a person of unmatched integrity. We have known Ray for most of his legal career and have watched him grow into the fine person and lawyer he is today. He has an unimpeachable moral character which was bestowed on him by his parents, and which he and his wife are now passing on to their two wonderful children.

In sum, Ray will make an excellent Federal Circuit judge if confirmed by the United States Senate. The country, the Federal Circuit, and the bar will benefit greatly by his continued and dedicated public service to the law. Please feel free to contact us if we can be of further assistance.

Sincerely,



Nancy J. Linck  
Solicitor, USPTO (1994-1998)



John M. Whealan  
Solicitor, USPTO (2001-2008)

Contact information:  
Nancy J. Linck



John M. Whealan



DAVID J. KAPPOS  
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 dkappos@cravath.com

April 19, 2013

Senator Patrick Leahy  
 United States Senate  
 437 Russell Senate Bldg  
 Washington, DC 20510

Senator Charles Grassley  
 United States Senate  
 135 Hart Senate Office Building  
 Washington, D.C. 20510-1501

Subject: Nomination of Raymond Chen  
 to Court of Appeals for Federal Circuit

Dear Senators Leahy and Grassley,

I write to you today in support of Raymond Chen, who you are currently considering based on the President's nomination of Mr. Chen to serve on the US Court of Appeals for the Federal Circuit. Mr. Chen is simply a superbly qualified candidate, and I urge his confirmation.

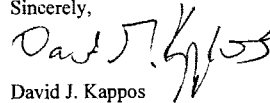
In my role as Director of the USPTO from August 2009 until January 2013, I had the opportunity to work closely and extensively with Mr. Chen on a wide range of matters encompassed by his role as Solicitor of USPTO. As Solicitor, Mr. Chen serves as USPTO's top advocate on all issues the Agency litigates in front of the Federal Circuit. He thus understands deeply the body of law entrusted to the Federal Circuit and indeed has helped shape it through his advocacy. Mr. Chen also fully appreciates the administration and processes of the Federal Circuit, having interacted with it extensively for years.

During the course of my experience working directly with Mr. Chen, we collaborated in setting appeal strategy, planning appropriate policy, writing and editing briefs, preparing for oral arguments, managing the many lawyers who report to Mr. Chen,

devising and delivering guidelines, rules, and educational materials to PTO's 7000+ patent examiners, and numerous other activities. Throughout all of the extensive matters on which I worked with Mr. Chen. I experienced first hand his sharp intellect, broad and extensive understanding of the patent laws as well as other IP Laws and laws of federal procedure, tenacious advocacy, keen listening and questioning, interest and curiosity for fully understanding issues as predicate to decision-making, and steady, thoughtful demeanor in all circumstances.

Mr. Chen's unique set of skills makes him an ideal nominee to the Federal Circuit. I simply could not imagine a better person to join the Court at a time when intellectual property generally and patents in particular have taken on such primary for our nation. Thank you for considering my views, for your leadership, and for your positive consideration of Raymond Chen's nomination to serve on the Court of Appeals for the Federal Circuit.

Sincerely,

A handwritten signature in dark ink, appearing to read "David J. Kappos", with a stylized flourish at the end.

David J. Kappos

**Knobbe Martens**  
 INTELLECTUAL PROPERTY LAW

KNOBBE MARTENS OLSON &amp; BEAR LLP

2040 Main St., 14th Fl., Irvine, CA 92614  
T (949) 750-0404Steven J. Nataupsky  
Steven.Nataupsky@knobbe.com

April 19, 2013

Honorable Patrick J. Leahy  
 Chairman  
 Committee on the Judiciary  
 United States Senate  
 224 Dirksen Senate Office Building  
 Washington, D.C. 20510

Honorable Chuck Grassley  
 Ranking Member  
 Committee on the Judiciary  
 United States Senate  
 135 Hart Senate Office Building  
 Washington, D.C. 20510

Dear Chairman Leahy and Senator Grassley:

I write in strong support of Raymond T. Chen's nomination to serve as a United States Circuit Judge on the United States Court of Appeals for the Federal Circuit. I understand that the Senate Judiciary Committee will conduct a hearing on Mr. Chen's nomination this coming Wednesday, April 24, 2013 in an effort to fill one of the two vacancies on the Federal Circuit.

By way of introduction, I am the Managing Partner of Knobbe, Martens, Olson & Bear, LLP. With over 275 lawyers and scientists nationwide, Knobbe Martens dedicates its practice to all aspects of intellectual property law including litigation. The lawyers at my firm regularly practice before the Federal Circuit. But more importantly, after graduating from New York University School of Law in 1994, Mr. Chen joined Knobbe Martens as an associate and I had the privilege of working with him every day during his time at the firm.

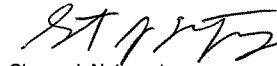
It was clear to me and others at my firm, even at that early stage in Ray's legal career, that he was destined to accomplish great things in the field of intellectual property. Ray is strikingly intelligent, grasps issues quickly, separates the wheat from the chaff and develops and readily implements creative solutions to problems. He left my firm to serve as a technical advisor for the Federal Circuit. He has excelled at every step in his intellectual property career, rising to the level of Deputy General Counsel of Intellectual Property Law and Solicitor for the United States Patent and Trademark Office.

More importantly, Ray possesses unparalleled communication skills and is comfortable working with individuals at every station, from individuals serving at the highest levels of government and attorneys in private practice, to administrative support personnel. Ray's extensive experience in both the private and public sectors will serve him well on the bench. His broad background in intellectual property law, and his calm demeanor and temperament, will assist him to thoughtfully interpret and objectively construe patent laws passed by Congress.

Ray is very familiar with the Federal Circuit, its broad and important jurisdiction, and its growing caseload. In addition to serving as a technical assistant for the Court before joining the Patent and Trademark Office, Ray has personally argued numerous cases before the Court including ground breaking cases. Ray is a leader that the entire intellectual property community looks up to and respects. He is perfectly suited to serve on the Court and would make a long-lasting contribution

Throughout my career, I have had the pleasure of working with hundreds, if not thousands of attorneys in the intellectual property field. Ray is one of the best. He embodies the prestige and wisdom worthy of sitting on the Court. I strongly encourage that Ray be promptly approved by the Senate Judiciary Committee and confirmed by the Senate. Please feel free to contact me at your convenience to discuss any other information you would like about Ray Chen.

Sincerely,

A handwritten signature in black ink, appearing to read "S. J. Nataupsky", written in a cursive style.

Steven J. Nataupsky





GENERAL COUNSEL OF THE  
UNITED STATES DEPARTMENT OF COMMERCE  
Washington, D.C. 20230

April 22, 2013

The Honorable Patrick J. Leahy  
Chairman, Committee on the Judiciary  
United States Senate  
Washington, DC 20510

The Honorable Charles E. Grassley  
Ranking Member, Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman Leahy and Senator Grassley:

I am pleased to write in support of the nomination of Raymond T. Chen to be a judge of the Federal Circuit Court of Appeals.

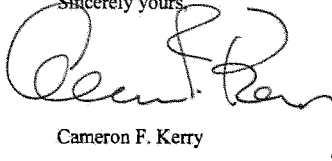
As General Counsel of the United States Department of Commerce, I have had occasion to work closely and frequently with Ray Chen. As you know, under 35 U.S.C. § 1, the United States Patent and Trademark Office is "subject to the policy direction of the Secretary of Commerce . . . ." A significant part of this policy direction occurs in the context of appellate litigation in the federal courts, and therefore requires close interaction between the Commerce Office of General Counsel and the Office of Solicitor at the USPTO.

Accordingly, I have had the opportunity to work with Raymond Chen on a number of cases that are significant to the development of intellectual property law. One that particularly stands out is *Bilski v. Kappos* from the Supreme Court's 2009 Term, part of an ongoing conversation among the judiciary, the Patent Office, and patent stakeholders about the scope of patentable subject matter. In that case, involving the validity of a business method patent, Ray Chen argued and prevailed in the Federal Circuit, and in the Supreme Court was a vital part of the government's team. The Solicitor General recognized the contributions his knowledge of the record, of the patent examination process, and of patent cases made to the government brief and moot courts by asking him to sit at counsel table (a rare honor for agency counsel), and the Secretary of Commerce recognized the importance of these contributions to a unanimous result from the Court by awarding Ray and the team he led the Secretary's Gold Medal Award (Commerce's highest honor).

This quality of work and intellectual leadership has been reflected in other cases on the Supreme Court's busy patent and intellectual property docket and numerous other cases at the Federal Circuit and other federal courts. As an advocate in court and in the government's interagency consultations, Ray has been committed and forceful but always courteous and thoughtful — exactly the attributes that one would like to see in a judge.

As a law clerk to United States Circuit Judge Elbert Tuttle in the old Fifth Circuit, I had the opportunity early in my legal career to see a great court and great judges in action. As a courtroom advocate since then, I have been before a range of judges. I know that Raymond Chen's combination of legal skills, personal attributes, and practical knowledge will make a great addition to the Federal Circuit.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Cameron F. Kerry". The signature is fluid and cursive, with the first name "Cameron" being more prominent and the last name "Kerry" following in a similar style.

Cameron F. Kerry



AMERICAN BAR ASSOCIATION

**Standing Committee on  
the Federal Judiciary**

 Attn: Denise A. Cardman  
740 Fifteenth Street, NW  
Washington, DC 20005-1022

CHAIR  
Judy Perry Martinez  
New Orleans, LA  
Mailing Address:  
2980 Fairview Park Drive  
Falls Church, VA 22042  
FIRST CIRCUIT  
Lisa G. Amato  
Suite 1100 North  
10 Post Office Square  
Boston, MA 02109

**Please respond to:**  
**Judy Perry Martinez, Esq.**  
**Northrop Grumman Corporation**  
**2980 Fairview Park Drive**  
**Falls Church, VA 22042**  
**Tel: 703-280-4088**  
**Email: [judy.martinez@ngc.com](mailto:judy.martinez@ngc.com)**

**VIA EMAIL AND FIRST CLASS MAIL**

SECOND CIRCUIT  
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2129 Arch Street  
Philadelphia, PA 19104-2808

FOURTH CIRCUIT  
E. Fitzgerald Fennell, III  
Suite 2100  
301 South College Street  
Chapel Hill, NC 27512-6021

FIFTH CIRCUIT  
Wayne L. Lee  
546 Canal Street  
New Orleans, LA 70130

SIXTH CIRCUIT  
Charles E. English, Jr.  
P.O. Box 270  
1101 College Street  
King's Green, KY 42102-0770

SEVENTH CIRCUIT  
Patricia Cristofa Slovak  
Suite 6000  
233 South Wacker Drive  
Chicago, IL 60606-6107

EIGHTH CIRCUIT  
David L. Brown  
5th Floor  
U.S. Bank Building  
320 Main Street  
Des Moines, IA 50309-4119

NINTH CIRCUIT  
Edith S. Marshall  
Suite 1400  
500 South Grand Avenue  
Los Angeles, CA 90071

TENTH CIRCUIT  
Sheryl J. Willett  
Suite 4100  
601 Union Street  
Seattle, WA 98101

ELEVENTH CIRCUIT  
Jim Galt  
Suite 4050  
1700 Lincoln Street  
Denver, CO 80202-4536

THIRTEENTH CIRCUIT  
Ramona A. Abston  
Suite 1208  
35 South DuSable Boulevard  
Miami, FL 33156-2729

FOURTEENTH CIRCUIT  
Ronald A. Carr  
10160 Fox Forest Drive  
Great Falls, VA 22066

FEDERAL CIRCUIT  
Ellen L. Flannery  
01 Pennsylvania Avenue, NW  
Washington, DC 20004-2401

STAFF COUNSEL  
Denise A. Cardman  
202 662-1761  
[denise.cardman@americanbar.org](mailto:denise.cardman@americanbar.org)

February 11, 2013

Honorable Patrick J. Leahy, Chairman  
Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, DC 20510

**Re: *Nomination of Raymond T. Chen***  
***To the United States Circuit Court for the Federal Circuit***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Raymond T. Chen who has been nominated for a position on the United States Circuit Court for the Federal Circuit. As a result of our investigation, the Committee is of the opinion that Mr. Chen is Unanimously Well Qualified for this position.

A copy of this letter has been provided to Mr. Chen.

Sincerely,

Judy Perry Martinez  
Chair

cc: Raymond T. Chen, Esq. (via email)  
The Honorable Kathy Ruemmler (via email)  
Michael Zubrensky, Esq. (via email)  
ABA Standing Committee on the Federal Judiciary (via email)  
Denise A. Cardman, Esq. (via email)

February 11, 2013  
Page 2

This letter was sent to Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on February 11, 2013.



CHAIR  
Judy Perry Martinez  
New Orleans, LA  
Mailing Address:  
2980 Fairview Park Drive  
Falls Church, VA 22042  
FIRST CIRCUIT  
Lisa G. Annese  
Suite 1100 North  
10 Post Office Square  
Boston, MA 02109

SECOND CIRCUIT  
Benito B. Pileon  
11 Times Square  
New York, NY 10036-8799

THIRD CIRCUIT  
Robert C. Heim  
Cira Centre  
2029 Arch Street  
Philadelphia, PA 19104-2808

FOURTH CIRCUIT  
E. Fitzgerald Farrell, III  
Suite 2100  
101 South College Street  
Charlotte, NC 28202-6021

FIFTH CIRCUIT  
Wayne J. Lee  
546 Canal Street  
New Orleans, LA 70130

SIXTH CIRCUIT  
Charles E. English, Jr.  
P.O. Box 770  
1101 College Street  
King Green, KY 42102-0770

SEVENTH CIRCUIT  
Patricia Costello Slovak  
Suite 6000  
231 South Wacker Drive  
Chicago, IL 60606-8387

EIGHTH CIRCUIT  
David L. Brown  
5th Floor  
U.S. Bank Building  
120 Walnut Street  
Des Moines, IA 50309-4119

NINTH CIRCUIT  
Edith R. Mankhai  
Suite 1500  
500 South Grand Avenue  
Los Angeles, CA 90071  
Sheryl J. Wilton  
Suite 4100  
601 Union Street  
Seattle, WA 98101

TENTH CIRCUIT  
Jim Cobb  
Suite 4000  
1700 Lincoln Street  
Denver, CO 80203-4556

ELEVENTH CIRCUIT  
Ramona A. Abadín  
Suite 1208  
55 South Duval Street  
Miami, FL 33154-7739

THIRTEENTH CIRCUIT  
Ronald A. Cohn  
10960 Fox Forest Drive  
Great Falls, VA 22066

FEDERAL CIRCUIT  
Ellen J. Flannery  
01 Pennsylvania Avenue, NW  
Washington, DC 20004-2401

STAFF COUNSEL  
Denise A. Cardman  
200-660-1761  
aco.cardman@americanbar.org

AMERICAN BAR ASSOCIATION

Please respond to:  
**Judy Perry Martinez, Esq.**  
**Northrop Grumman Corporation**  
**2980 Fairview Park Drive**  
**Falls Church, VA 22042**  
**Tel: 703-280-4088**  
**Email: [judy.martinez@ngc.com](mailto:judy.martinez@ngc.com)**

**VIA EMAIL AND FIRST CLASS MAIL**

September 20, 2012

The Honorable Patrick J. Leahy, Chairman  
Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, DC 20510

**Re: *Nomination of Jennifer A. Dorsey***  
***To the United States District Court for the District of Nevada***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Jennifer A. Dorsey who has been nominated for a position on the United States District Court for the District of Nevada. As a result of our investigation, the Committee is of the opinion that Ms. Dorsey is Substantial Majority-Qualified, Minority-Not Qualified for this position.

A copy of this letter has been provided to Ms. Dorsey.

Sincerely,

Judy Perry Martinez  
Chair

cc: Jennifer A. Dorsey  
The Honorable Kathy Ruemmler (via email)  
Michael Zubrensky, Esq. (via email)  
ABA Standing Committee on the Federal Judiciary (via email)  
Denise A. Cardman, Esq. (via email)

September 20, 2012  
Page 2

This letter was sent to Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on September 20, 2012

**NOMINATION OF PATRICIA E. CAMPBELL-SMITH, NOMINEE TO BE A JUDGE OF THE U.S. COURT OF FEDERAL CLAIMS; ELAINE D. KAPLAN, NOMINEE TO BE A JUDGE OF THE U.S. COURT OF FEDERAL CLAIMS; WILLIAM H. PRYOR, JR., NOMINEE TO BE A MEMBER OF THE U.S. SENTENCING COMMISSION; AND RACHEL ELISE BARKOW, NOMINEE TO BE A MEMBER OF THE U.S. SENTENCING COMMISSION**

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**WEDNESDAY, MAY 8, 2013**

U.S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Committee met, pursuant to notice, at 2:36 p.m., in Room SD-226, Dirksen Senate Office Building, Hon. Al Franken, presiding.

Present: Senators Franken, Grassley, and Sessions.

**OPENING STATEMENT OF HON. AL FRANKEN, A U.S. SENATOR FROM THE STATE OF MINNESOTA**

Senator FRANKEN. This hearing will come to order. Welcome, everyone, to this Judiciary Committee hearing.

We will hear from four nominees today—two nominees to the United States Sentencing Commission and two to the United States Court of Federal Claims.

Judge William Pryor is nominated to serve on the U.S. Sentencing Commission. He currently sits on the Eleventh Circuit Court of Appeals, and before that he was Alabama's Attorney General. And my understanding is that Senator Sessions will be along shortly, no doubt to say wonderful, glowing things about Judge Pryor. And in his capacity as Alabama's Attorney General, he was instrumental in creating Alabama's Sentencing Commission.

Professor Rachel Barkow also is nominated to serve on the Sentencing Commission. She teaches at New York University's School of Law, where she is the faculty director of the Center on the Administration of Criminal Law. She has written extensively about sentencing issues, both in academic papers and in amicus briefs.

Patricia Campbell-Smith is nominated to the U.S. Court of Federal Claims. She has been working on that court for 15 years, first as a law clerk, then as a special master.

Finally, Elaine Kaplan is nominated to the U.S. Court of Federal Claims. She has a distinguished legal career during which she has led the U.S. Office of Special Counsel, has represented the National Treasury Employees Union, and has been the General Counsel for the Office of Personnel Management.

These are all qualified nominees, and I hope that we can act quickly and in a bipartisan manner to give all of you an up-or-down vote.

The Ranking Member will be here very shortly, so why don't we get right to the oath. Let us do that. I guess I would ask—I am sorry I asked you to sit, but now I am going to ask you to stand again. Raise your right hand, I guess. Do you affirm that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. CAMPBELL-SMITH. I do.

Ms. KAPLAN. I do.

Judge PRYOR. I do.

Ms. BARKOW. I do.

Senator FRANKEN. Thank you.

I actually did not say to sit, but it is okay.

[Laughter.]

Senator FRANKEN. Welcome to each of you and congratulations on your nominations. I would like to give each of you the opportunity to make an opening statement and to acknowledge any friends or family that may be here with you today or watching at home. So why don't we first start with Ms. Campbell-Smith.

**STATEMENT OF PATRICIA E. CAMPBELL-SMITH, NOMINEE TO  
BE A JUDGE OF THE U.S. COURT OF FEDERAL CLAIMS**

Ms. CAMPBELL-SMITH. Thank you kindly. Good afternoon, Mr. Chair.

I would like to thank President Obama for the privilege of this nomination. I would like to thank the Senate Judiciary Committee for convening this nominations hearing. I extend my particular thanks to you, Mr. Chair, for your conduct of this hearing.

Present with me today are my mother, Jewel Campbell; my daughter, Micah Campbell-Smith; the Chief Judge of the Court of Federal Claims, Emily Hewitt.

Senator FRANKEN. Would you stand, those who Ms. Campbell-Smith is naming? Okay. I am sorry. Please proceed.

Ms. CAMPBELL-SMITH. The clerk of the Court of Federal Claims, Hazel Keahey; my current law clerks, Camille Collett and Rachel Leahey; a former law clerk who is currently an associate with the law firm of Reed Smith, Vicki Lung.

I am also sincerely thankful for those—I am sincerely thankful for those who are with me today. I am also sincerely thankful for those who were unable to be present with me but who are watching, including my father, Robert Campbell; my brothers, Marvin Campbell and Michael Campbell, and their families; my aunt, Ava Sedgwick; my grandmother, Thelma Carter; and a host of extended family members and friends for whom I am very grateful.

I would like to particularly acknowledge a bevy of friends and colleagues from the Office of Special Masters who are here with me today with whom I have had the privilege of working for the past seven years.

I look forward to answering the Committee's questions.

[The biographical information of Ms. Campbell-Smith follows:]



UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY  
QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).

Patricia Elaine Campbell-Smith  
Patricia Elaine Campbell (formerly)

2. **Position:** State the position for which you have been nominated.

Judge, United States Court of Federal Claims

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

United States Court of Federal Claims  
Office of Special Masters  
717 Madison Place, NW  
Washington, DC 20005

4. **Birthplace:** State year and place of birth.

1966; Baltimore, Maryland

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1989 – 1992, Tulane University Law School; J.D. (with honors), 1992

1983 – 1987, Duke University; B.S.E.E. (with honors), 1987

Summer 1985, New College, Oxford University; no degree

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2005 – present  
United States Court of Federal Claims  
Office of Special Masters  
717 Madison Place, NW  
Washington, DC 20005  
Chief Special Master (2011 – present)  
Special Master (2005 – 2011)

1998 – 2005  
The Honorable Emily C. Hewitt (currently Chief Judge)  
United States Court of Federal Claims  
National Courts Building  
717 Madison Place, NW, Suite 617  
Washington, DC 20005  
Career Law Clerk

1993 – 1996; 1997 – 1998  
Liskow & Lewis  
701 Poydras Street, Suite 5000  
New Orleans, Louisiana 70139  
Associate Attorney

1996 – 1997  
The Honorable Sarah S. Vance (currently Chief Judge)  
United States District Court for the Eastern District of Louisiana  
500 Poydras Street, Chambers 255  
New Orleans, Louisiana 70130  
Term Law Clerk

1992 – 1993  
The Honorable Martin L.C. Feldman  
United States District Court for the Eastern District of Louisiana  
500 Poydras Street, Chambers 555  
New Orleans, Louisiana 70130  
Term Law Clerk

Spring 1992  
The Honorable John Minor Wisdom  
United States Court of Appeals for the Fifth Circuit  
600 South Maestri Place  
New Orleans, Louisiana 70130  
Extern

Summer 1991  
Liskow & Lewis  
701 Poydras Street, Suite 5000

New Orleans, Louisiana 70139  
Summer Associate

Summers 1990, 1991  
Stone, Pigman, Walther, Witman  
546 Carondelet Street  
New Orleans, Louisiana 70130  
Summer Associate

Summer 1990  
Exxon Company, U.S.A. (now Exxon Mobil Corporation)  
Office of Legal Counsel, Exploration and Production  
1555 Poydras Street  
New Orleans, Louisiana 70139  
Summer Associate

1987 – 1989  
Exxon Company, U.S.A. (now Exxon Mobil Corporation)  
3329 Scenic Highway  
Baton Rouge, Louisiana 70805  
Electrical and Instrumentation Engineer (pipestills and flares)

Other Affiliations (uncompensated):

2006 – present  
Aglow International Community Lighthouse  
1718 Belmont Avenue, Suite K  
Baltimore, Maryland 21244  
President

2000 – 2003  
Garrison Forest School  
300 Garrison Forest Road  
Owings Mills, Maryland 21117  
Member, Board of Trustees

2001 – 2003  
Samuel Ready Scholarship Foundation  
Post Office Box 202  
Riderwood, Maryland 21139  
Member, Board of Trustees

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I was not required to register for the selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Law School:

Moot Court Board Appointment (based on class ranking) (1990 – 1992)

Legal Research and Writing Fellow (by invitation) (1991 – 1992)

Tulane Environmental Law Clinic, advocate (1991)

Undergraduate:

A.B. Duke Merit Scholar (1983 – 1987)

Eta Kappa Nu (electrical engineering honor society) (1986 – 1987)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association (2001 – present)

Court of Federal Claims Bar Association (2000 – present)

Federal Circuit Bar Association (2004 – present)

Louisiana State Bar Association (1993 – 2011, inactive 2011 – present)

Environmental Law Section (1994 – 1999)

Minority Involvement Section (1993 – 1999)

Intellectual Property Section (1998 – 1999)

Maryland State Bar Association (2001 – 2011)

National Association of Women Judges (2006 – present)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

2000, Maryland  
1993, Louisiana

There have been no lapses in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Federal Circuit, 2002  
United States Court of Federal Claims, 2000  
Supreme Court of Louisiana, 1993  
Maryland Court of Appeals, 2000

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Aglow International (1999 – present)  
Community Lighthouse President (2006 – present)

Garrison Forest School  
Member, Board of Trustees (2000 – 2003)  
School Life Committee, Chair (2002 – 2003)

Samuel Ready Scholarship Foundation  
Member, Board of Trustees (2001 – 2003)

United Cerebral Palsy Board of Trustees, Intern (1997 – 1998)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

The Garrison Forest School Board of Trustees is diverse, but the school is an all girls' school. The Samuel Ready Scholarship Foundation Board is diverse, but the scholarship foundation provides financial support to girls. Although Aglow International was founded as an organization for Christian women, the long-standing participation of men was recognized formally more than ten years ago. Consistent with this recognition, the organization changed its name in 1995 from Women's Aglow to Aglow International. Otherwise, to the best of my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or practical implementation of membership policies.

12. **Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, and letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

To the best of my knowledge, I have not written or edited any published material.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

To the best of my knowledge, I have not prepared or contributed to the preparation of any publicly available reports, memoranda or policy statements.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

To the best of my knowledge, I have not issued or provided any testimony, official statements or other communications.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom

the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

December 6, 2012: I provided brief remarks to the Advisory Commission on Childhood Vaccines, Department of Health and Human Services, concerning the appointment of two Special Masters, in Rockville, Maryland. I have no notes, transcript or recordings. The address of the Advisory Commission is 5600 Fishers Lane, Rockville, Maryland 20852.

November 15, 2012: I participated on a conference panel concerning proposed amendments to the Vaccine Injury Table for the Office of Special Masters during the 25th Annual U.S. Court of Federal Claims Judicial Conference, in Washington, DC. Audio of the panel is available at:  
[http://www.cofc.uscourts.gov/sites/default/files/conferences/2012/audio/vaccine\\_proposed\\_table\\_amendments.mp3](http://www.cofc.uscourts.gov/sites/default/files/conferences/2012/audio/vaccine_proposed_table_amendments.mp3).

November 15, 2012: I participated on a conference panel concerning proposed revisions to the Practice Guidelines for the Office of Special Masters during the 25th Annual U.S. Court of Federal Claims Judicial Conference, in Washington, DC. Audio of the panel is available at:  
[http://www.cofc.uscourts.gov/sites/default/files/conferences/2012/audio/vaccine\\_afternoon\\_sessions.mp3](http://www.cofc.uscourts.gov/sites/default/files/conferences/2012/audio/vaccine_afternoon_sessions.mp3).

November 15, 2012: I participated on a conference panel entitled, "The Vaccine Program – Year in Review" during the 25th Annual U.S. Court of Federal Claims Judicial Conference, in Washington, DC. Audio of the panel is available at:  
[http://www.cofc.uscourts.gov/sites/default/files/conferences/2012/audio/vaccine\\_afternoon\\_sessions.mp3](http://www.cofc.uscourts.gov/sites/default/files/conferences/2012/audio/vaccine_afternoon_sessions.mp3).

October 10, 2012: I participated in a panel discussion entitled, "The Role of the Judicial Law Clerk," with the Black Law Student Association at American University Law School, in Washington, DC. I have no notes, transcript or recordings. The address of American University Law School is 4801 Massachusetts Avenue, NW, Washington, DC 20016.

October 9, 2012: I participated in a panel discussion entitled, "The Role of the Judicial Law Clerk," with a judicial opinion writing class, held at Catholic University Law School in Washington, DC. I have no notes, transcript or recordings. The address of Catholic University Law School is 620 Michigan Avenue, NE, Washington, DC 20064.

July 18, 2012: I participated in a panel discussion entitled, "Introduction to the Court – Vaccine Jurisdiction" with law clerks and interns sponsored by the Court of Federal Claims Bar Association, in Washington, DC. I have no notes, transcript

or recordings. The address of the CFC Bar Association is Post Office Box 7614 (Ben Franklin Station), Washington, DC 20044.

January 26, 2012: I participated in a panel discussion entitled, "Judicial Selection – The Nuts and Bolts of Making it to the Bench" held by the National Association of Women Judges, in Baltimore, Maryland. I have no notes, transcript or recordings, but press coverage is supplied. The address of the National Association of Women Judges is 1341 Connecticut Avenue, NW, Suite 4.2, Washington, DC 20036.

December 8, 2011: I provided brief introductory remarks concerning the role of the Office of Special Masters during orientation for new members of the Advisory Commission on Childhood Vaccines, Department of Health and Human Services, in Rockville, Maryland. I have no notes, transcript or recordings. The address of the Advisory Commission is 5600 Fishers Lane, Rockville, Maryland 20852.

October 19, 2011: I participated on a conference panel entitled, "The Vaccine Program – Year in Review" during the 24th Annual U.S. Court of Federal Claims Judicial Conference, in Berkeley, California. I have no notes, transcript or recordings. The address of the Court of Federal Claims is 717 Madison Place, NW, Washington, DC 20005.

October 19, 2011: I participated on a conference panel discussing career opportunities at the Office of Special Masters with Boalt Law students and faculty during the 24th Annual U.S. Court of Federal Claims Judicial Conference, in Berkeley, California. I have no notes, transcript or recordings. The address of the Court of Federal Claims is 717 Madison Place, NW, Washington, DC 20005.

October 18, 2011: I participated in a panel discussion entitled, "The New IOM Report on Vaccine Safety" during the 24th Annual U.S. Court of Federal Claims Judicial Conference, in Berkeley, California. Audio of the panel is available at: <http://www.cofc.uscourts.gov/sites/default/files/conferences/2011/2011JC01.wav>.

October 18, 2011: I participated in a panel discussion entitled, "Contemplating Genetic Variation and adverse Events" during the 24th Annual U.S. Court of Federal Claims Judicial Conference, in Berkeley, California. Audio of the panel is available at: <http://www.cofc.uscourts.gov/sites/default/files/conferences/2011/2011JC01.wav>.

September 1, 2011: I provided a brief introduction and comments regarding the role of the Office of Special Masters during a meeting of the Advisory Commission on Childhood Vaccines, Department of Health and Human Services, in Rockville, Maryland. Transcript supplied.

July 20, 2011: I participated in a panel discussion entitled, "Introduction to the Court – Vaccine Jurisdiction" with law clerks and interns, sponsored by the Court



of Federal Claims Bar Association, in Washington, DC. I have no notes, transcript or recordings. The address of the CFC Bar Association is Post Office Box 7614 (Ben Franklin Station), Washington, DC 20044.

June 29, 2010: I participated in a panel discussion entitled, "Using Your Internship or Clerkship to Springboard Your Legal Career" with law clerks and summer interns, sponsored by the Court of Federal Claims Bar Association, in Washington, DC. I have no notes, transcript or recording. The address of the CFC Bar Association is Post Office Box 7614 (Ben Franklin Station), Washington, DC 20044.

July 22, 2009: I participated in a panel discussion entitled, "Introduction to the Court – Vaccine Jurisdiction" with law clerks and summer interns, sponsored by the Court of Federal Claims Bar Association, in Washington, DC. I addressed the Court's vaccine litigation and talked about my experience as a former clerk. I have no notes, transcript or recordings. The address of the CFC Bar Association is Post Office Box 7614 (Ben Franklin Station), Washington, DC 20044.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

To the best of my knowledge, I have not given any interviews.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I was appointed in December 2005 by the judges of the Court of Federal Claims to serve as one of the eight special masters within the Office of Special Masters. In this role, I hear and decide vaccine injury claims brought pursuant to the National Vaccine Injury Compensation Program. Established by the Vaccine Act in 1986, the Office of Special Masters is a component of the Court of Federal Claims. I am now serving my second term of four years as a special master.

In April 2011, I was appointed by the judges of the Court of Federal Claims to serve as chief special master of the office, adding various administrative and budgetary responsibilities to my ongoing case management responsibilities as a judicial officer.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment?

1663

i. Of these, approximately what percent were:

jury trials:	0%
bench trials:	100%
civil proceedings:	100%
criminal proceedings:	0%

b. Provide citations for all opinions you have written, including concurrences and dissents.

See attached list.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. Doe 11 v. Sec'y of Health & Human Servs., 2008 WL 649065 (Fed. Cl. Spec. Mstr. Jan. 31, 2008), vacated and remanded, 2008 WL 4899356 (Fed. Cl.), on remand, 2008 WL 4899356 (Fed. Cl. Spec. Mstr.), aff'd, 87 Fed. Cl. 1 (2009), aff'd, 601 F.3d 1349 (Fed. Cir. 2010), cert. denied, 131 S. Ct. 573 (2010).

This matter concerned a vaccine injury claim presenting the issue of whether petitioners' minor daughter died as a result of receiving a hepatitis B vaccine. I found that petitioners failed to establish vaccine-related causation. On review, my decision was vacated and remanded, with criticism that I had applied an overly onerous burden of proof. Relying, in part, upon evidence provided by respondent that undercut petitioners' assertions, I found on remand that petitioners had failed to demonstrate entitlement to compensation. The remand decision was affirmed on review by the Court of Federal Claims and on appeal to the Federal Circuit.

Counsel for Petitioner: Richard Gage  
1815 Pebrican Avenue  
Post Office Box 1223  
Cheyenne, Wyoming 82001  
(307) 433-8864

Counsel for Respondent: Glenn A. MacLeod  
United States Department of Justice  
Vaccine/Torts Branch, Civil Division  
Post Office Box 146  
Ben Franklin Station

Washington, DC 20044  
(202) 616-4122

2. Hazlehurst v. Sec'y of Health & Human Servs., No. 03-654V, 2009 WL 332306 (Fed. Cl. Spec. Mstr. Feb. 12, 2009), aff'd, 88 Fed. Cl. 473 (2009), aff'd, 604 F.3d 1343 (Fed. Cir. 2010).

This matter concerned a vaccine injury claim, selected as one of three Omnibus Autism Proceeding test cases, presenting the general issue of whether children can develop autism as a result of receiving a measles, mumps, and rubella (MMR) vaccine in combination with thimerosal-containing vaccines. After carefully considering extensive evidence, including the testimony of a number of exceptionally well-qualified medical and scientific expert witnesses, I found in a 172-page decision that the evidence was not sufficient to establish that the receipt of a MMR vaccine in combination with thimerosal-containing vaccines caused autism either in general or in the specific case involving petitioners' minor son. The decision was affirmed on review by the Court of Federal Claims and on appeal to the Federal Circuit.

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Counsel for Respondent: Linda Renzi  
United States Department of Justice  
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3. Mead v. Sec'y of Health & Human Servs., No. 03-215V, 2010 WL 892248 (Fed. Cl. Spec. Mstr. Mar. 12, 2010).

This matter concerned a vaccine injury claim, selected as one of three Omnibus Autism Proceeding test cases presenting the general issue of whether children can develop autism as the result of receiving thimerosal-containing vaccines. After careful consideration of extensive evidence, including the testimony of a number of preeminent scientific and medical expert witnesses, I found in a 127-page decision that the evidence was not sufficient to establish that the receipt of thimerosal-containing vaccinations caused autism either in general or in the specific case of petitioners' minor son. Petitioners did not seek review of the decision.

Counsel for Petitioner: Thomas Powers  
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Counsel for Respondent: Lynn Ricciardella  
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4. Bast v. Sec'y of Health & Human Servs., No. 01-565V, 2012 WL 6858040 (Fed. Cl. Spec. Mstr. Dec. 20, 2012), appeal docketed (Fed. Cl. Jan. 22, 2013).

This matter concerned a vaccine injury claim alleging petitioner's minor daughter suffered seizures, an encephalopathy, and liver damage as a result of a hepatitis B vaccination. Petitioner proceeded on the alternate theories of vaccine-induced autoimmunity and mitochondrial dysfunction. I found in a 71-page decision that the record did not support a finding of entitlement on either of the theories that petitioner pursued. As to the theory of vaccine-induced autoimmunity, I found no reliable evidence that petitioner suffered from an autoimmune condition, either vaccine-induced or otherwise. As to the theory of mitochondrial dysfunction, I found that petitioner failed to prove that her daughter suffered from a mitochondrial dysfunction that was either caused or aggravated by the receipt of a hepatitis B vaccination.

Counsel for Petitioner: Clifford Shoemaker  
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Counsel for Respondent: Ann Martin  
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5. Wax v. Sec'y of Health & Human Servs., No. 03-2830V, 2012 WL 3867161 (Fed. Cl. Spec. Mstr. Aug. 7, 2012), aff'd, --- Fed. Cl. ---, 2012 WL 6771576 (Dec. 18, 2012).

This matter concerned a vaccine injury claim pending in the court's Omnibus Autism Proceeding filed after the Vaccine Act's statute of limitations had run. I dismissed the claim after determining that the petition was time-barred. I addressed the constitutionality of the Act's statute of limitations, and I found the doctrine of equitable tolling inapplicable under the factual circumstances of the case.

Counsel for Petitioner: Michael London  
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Counsel for Respondent: Lynn Ricciardella  
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6. Waddell v. Sec'y of Health & Human Servs., No. 10-316V, 2012 WL 4829291 (Fed. Cl. Spec. Mstr. Sept. 19, 2012).

This matter concerned a vaccine injury claim alleging that petitioner's minor son suffered a vaccine-induced encephalopathy caused by or significantly aggravated by the minor's receipt of his twelve-month vaccinations, including an MMR vaccine. After issuing a fact ruling, I ruled on petitioner's motion for a decision. Dismissing the claim for insufficient proof, I addressed the difference between an encephalopathy as narrowly defined by the Vaccine Injury Table, which is presumptively compensable under the Vaccine Program, and an encephalopathy as more broadly understood by medical professionals.

Counsel for Petitioner: Mark T. Sadaka  
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(201) 266-6570

Counsel for Respondent: Lynn Ricciardella  
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7. Riddick v. Sec'y of Health & Human Servs., No. 99-643V, 2006 WL 2990220 (Fed. Cl. Spec. Mstr. Oct. 4, 2006).

This matter concerned a vaccine injury claim involving an allegation that petitioner's receipt of the hepatitis B vaccine during his first year of medical school caused him to develop chronic fatigue syndrome and postural orthostatic tachycardia syndrome. I denied respondent's motion to dismiss, finding sufficient circumstantial evidence of vaccination in the absence of an immunization record. My ruling enabled the parties to reach an agreement regarding a damages award. I issued a decision awarding compensation to petitioner based on the parties' stipulation of damages.

Counsel for Petitioner: Ronald C. Homer  
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Counsel for Respondent: Althea Davis  
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8. Shaw v. Sec'y of Health & Human Servs., No. 01-707V, 2009 WL 3007729 (Fed. Cl. Spec. Mstr. Aug. 31, 2009), reconsideration denied, (Fed. Cl. Spec. Mstr. Sept. 29, 2009), review granted in part, remanded by 91 Fed. Cl. 715 (2010).

This matter concerned a vaccine injury claim involving an allegation that petitioner's receipt of the hepatitis B vaccine series caused him to suffer a neuropathy. I dismissed the claim, finding that petitioner had failed to meet his burden of proof establishing vaccine-related causation. Among the factors that informed my decision to dismiss was petitioner's reliance upon a medical expert who lacked the expertise in neurology to address the pertinent medical issues. Petitioner moved for reconsideration of my dismissal decision, and I declined to grant that motion. Petitioner then sought review from the Court of Federal Claims. The Court of Federal Claims affirmed my dismissal decision, but reversed my decision not to consider the new evidence introduced by

petitioner in the motion for reconsideration. The case is now before me on remand.

Counsel for Petitioner: Ronald C. Homer  
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Counsel for Respondent: Voris Johnson  
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9. Shaw v. Sec’y of Health & Human Servs., No. 01-707V, 2009 WL 1010058 (Fed. Cl. Spec. Mstr. Mar. 27, 2009), review dismissed by 88 Fed. Cl. 463 (2009), rev’d, 609 F.3d 1372 (Fed. Cir. 2010), denying review (Fed. Cl. Feb. 14, 2012) (filed under seal).

This matter concerned petitioner’s counsel’s motion for an award of interim fees prior to the issuance of a ruling on petitioner’s entitlement to compensation. I granted in part, and deferred the remainder of, the request for interim attorneys’ fees and costs and thereby permitted a fee award prior to the conduct of an entitlement decision. The Court of Federal Claims held, on review, that it lacked jurisdiction to consider the motion and dismissed it. On appeal, the Federal Circuit reversed the dismissal decision finding that the Court of Federal Claims did have jurisdiction to consider the motion for review. Subsequently, the Court of Federal Claims affirmed my decision awarding a partial grant of the requested interim fees. A second motion for interim fees was filed and granted in conformance with the parties’ stipulation.

Counsel for Petitioner: Ronald C. Homer  
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10. Lowrie v. Sec'y of Health & Human Servs., No. 03-1585, 2012 WL 5853026 (Fed. Cl. Spec. Mstr. Oct. 26, 2012).

This matter concerned a vaccine injury claim alleging that a Vaccine Table injury of encephalopathy occurred as a result of a diphtheria, tetanus, acellular pertussis vaccine. I issued a ruling on entitlement in response to respondent's motion for ruling on the record, finding that petitioner was entitled to compensation. The ruling required careful review of the fact findings, which were made by a former special master who had held two fact hearings, and the opinions on causation provided by both parties' experts. In response to my ruling, the parties filed a proffer on damages. I issued a decision awarding the proffered damages.

Counsel for Petitioner: Robert T. Moxley  
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(307) 632-1112

Counsel for Respondent: Darryl Wishard  
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- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. Doe 11 v. Sec'y of Health & Human Servs., No. 99-212V, 2008 WL 4899356 (Fed. Cl. Spec. Mstr. Oct. 29, 2008), aff'd, 87 Fed. Cl. 1 (2009), aff'd, 601 F.3d 1349 (Fed. Cir. 2010), cert. denied, 131 S. Ct. 573 (2010).

Counsel for Petitioner: Richard Gage  
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Counsel for Respondent: Glenn A. MacLeod  
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2. Hazlehurst v. Sec'y of Health & Human Servs., No. 03-654V, 2009 WL 332306 (Fed. Cl. Spec. Mstr. Feb. 12, 2009), aff'd, 88 Fed. Cl. 473 (2009), aff'd, 604 F.3d 1343 (Fed. Cir. 2010).

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3. Mead v. Sec'y of Health & Human Servs., No. 03-215V, 2010 WL 892248 (Fed. Cl. Spec. Mstr. Mar. 12, 2010)

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4. Bast v. Sec'y of Health & Human Servs., No. 01-565V, 2012 WL 6858040 (Fed.Cl. Spec. Mstr. Dec. 20, 2012), appeal docketed (Fed. Cl. Jan. 22, 2013).

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5. Wax v. Sec'y of Health and Human Servs., No. 03-2830V, 2012 WL 3867161  
(Fed. Cl. Spec. Mstr. Aug. 7, 2012), aff'd, --- Fed. Cl. ---, 2012 WL 6771576  
(Dec. 18, 2012).

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6. Waddell v. Sec'y of Health & Human Servs., No. 10-316V, 2012 WL 4829291  
(Fed. Cl. Spec. Mstr. Sept. 19, 2012).

Counsel for Petitioner: Mark T. Sadaka  
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7. Riddick v. Sec'y of Health & Human Servs., No. 99-643V, 2006 WL 2990220 (Fed. Cl. Spec. Mstr. Oct. 4, 2006).

Counsel for Petitioner: Ronald C. Homer  
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Counsel for Respondent: Althea Davis  
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8. Shaw v. Sec'y of Health & Human Servs., No. 01-707V, 2009 WL 3007729 (Fed. Cl. Spec. Mstr. Aug. 31, 2009), reconsideration denied, (Fed. Cl. Spec. Mstr. Sept. 29, 2009), review granted in part, remanded by 91 Fed. Cl. 715 (2010).

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9. Shaw v. Sec'y of Health & Human Servs., No. 01-707V, 2009 WL 1010058 (Fed. Cl. Spec. Mstr. Mar. 27, 2009), review dismissed by 88 Fed. Cl. 463 (2009), rev'd, 609 F.3d 1372 (Fed. Cir. 2010), denying review (Fed. Cl. Feb. 14, 2012) (filed under seal).

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10. Lowrie v. Sec'y of Health & Human Servs., No. 03-1585, 2012 WL 5853026 (Fed. Cl. Spec. Mstr. Oct. 26, 2012).

Counsel for Petitioner: Robert T. Moxley  
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e. Provide a list of all cases in which certiorari was requested or granted.

Doe 11 v. Sec'y of Health & Human Servs., No. 99-212V, 2008 WL 4899356 (Fed. Cl. Spec. Mstr. Oct. 29, 2008), aff'd, 87 Fed. Cl. 1 (2009), aff'd, 601 F.3d 1349 (Fed. Cir. 2010), cert. denied, 131 S. Ct. 573 (2010).

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

Doe 11 v. Sec'y of Health & Human Servs., 2008 WL 649065 (Fed. Cl. Spec. Mstr. Jan. 31, 2008), vacated and remanded, 2008 WL 4899356 (Fed. Cl.), on remand, 2008 WL 4899356 (Fed. Cl. Spec. Mstr.), aff'd, 87 Fed. Cl. 1 (2009), aff'd, 601 F.3d 1349 (Fed. Cir. 2010), cert. denied, 131 S. Ct. 573 (2010). With respect to the Doe 11 petitioners' entitlement claim, I decided that petitioners had failed to prove that their minor daughter died as a result of receiving a hepatitis B vaccine. On review, the Court of Federal Claims (COFC) found that I had applied the legal standard incorrectly. The COFC vacated my decision and remanded the case to me with particular instructions. On remand, I held that petitioners failed to prove entitlement to compensation relying, in part, on evidence provided by respondent that undercut petitioners' assertions. My decision on remand was

affirmed on review by the Court of Federal Claims and on appeal to the Federal Circuit. The Supreme Court denied petitioners' petition for writ of certiorari.

Doe 11 v. Sec'y of Health & Human Servs., 2009 WL 1803457 (Fed. Cl. June 9, 2009) rev'd and remanded in part sub nom. Doe/11 v. Sec'y of Health & Human Servs., 89 Fed. Cl. 661 (Fed. Cl. 2009), remanded to Doe 11 v. Sec'y of Health & Human Servs., XX-XXXV, 2010 WL 529425 (Fed. Cl. Jan. 29, 2010). With respect to the Doe 11 petitioners request for interim attorneys' fees and costs, I awarded the undisputed portion of requested fees and deferred a decision on the disputed aspect of the interim fee petition until counsel submitted a final application for fees. On review, the court awarded fees for the portion of work performed by counsel before the court on review. The court then remanded the case to me to resolve the disputed aspect of the interim fee petition that I earlier had sought to defer. On remand, I resolved the remaining interim fee dispute.

House v. Sec'y of Health & Human Servs., No. 99-406V, 2011 WL 7341503 (Fed. Cl. Spec. Mstr. Feb. 28, 2011), rev'd and remanded, (Fed. Cl. Aug. 29, 2011) (filed under seal), remanded to (Fed. Cl. Spec. Mstr. Feb. 14, 2012) (decision based on the parties' stipulation). I dismissed petitioner's claim for compensation, finding that he had failed to prove that the hepatitis B vaccine series he had received led to his development of Crohn's Disease. On review, the court determined that I had erred in my evaluation of two of the three prongs of the applicable legal standard. The court reversed and remanded the case to me. On remand, the parties reached an agreement regarding a damages award. I subsequently issued a decision awarding the amount of damages to which the parties had stipulated.

Shaw v. Sec'y of Health & Human Servs., No. 01-707V, 2009 WL 3007729 (Fed. Cl. Spec. Mstr. Aug. 31, 2009), reconsideration denied, 2009 WL 3007729 (Fed. Cl. Spec. Mstr. Sept. 29, 2009), review granted in part and remanded, 91 Fed. Cl. 715 (2010). I dismissed petitioner's claim, finding that he had failed to meet his burden of proof establishing vaccine-related causation. Among the factors that informed my decision to dismiss was petitioner's expert's insistence that petitioner suffered not from the injury petitioner's treating doctors repeatedly considered, but from a neurological injury that none of his many treating doctors had diagnosed or contemplated. Petitioner moved for reconsideration of my dismissal decision, offering evidence in support of a finding that the received vaccine caused the injury petitioner's treating physicians suspected he might have. I denied the motion for reconsideration. On review, the court affirmed my initial dismissal decision, but remanded the case for consideration of the evidence submitted in the motion for reconsideration. The parties then tried to resolve the matter informally. Those efforts were unsuccessful. The matter is now ripe before me for decision.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

I have issued more than 1,500 unpublished decisions. These decisions constitute approximately 95% of the decisions I have issued. These unpublished decisions include: (1) summary dismissal decisions based on petitioner's acknowledgment that she cannot prove her claim; and (2) decisions awarding either damages or attorneys' fees based on the parties' stipulations. The Clerk of the Court is the custodian of the decisions, some of which are available through the court's electronic case filing system. The unpublished decisions are also posted on the Court of Federal Claims website. Some of the decisions are available on Westlaw, and substantially fewer are available on Lexis.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

Wax v. Sec'y of Health and Human Servs., No. 03-2830V, 2012 WL 3867161 (Fed. Cl. Spec. Mstr. Aug. 7, 2012), aff'd, --- Fed. Cl. ---, 2012 WL 6771576 (Dec. 18, 2012) (addressing petitioners' contention that applying the Vaccine Act's limitations period in their son's autism case violated their federal constitutional rights to due process and equal protection).

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on a federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;

- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I have not received any requests for my recusal. Nor has a conflict of interest arisen that requires my recusal.

**15. Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

Other than judicial office, I have not held any public office. I have not had any unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have not held office in or rendered services to any political party or election committee. I have not held a position or played a role in a political campaign.

**16. Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
  - i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I have served as a law clerk to three federal judges. I served as a term law clerk to The Honorable Martin L.C. Feldman, United States District Court for the Eastern District of Louisiana, from 1992 to 1993. I served as a term law clerk to The Honorable Sarah S. Vance, United States District Court for the Eastern District of Louisiana, from 1996 to 1997. I served as a career law clerk to The Honorable Emily C. Hewitt, United States Court of Federal Claims, from 1998 to 2005.

- ii. whether you practiced alone, and if so, the addresses and dates

I have not practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1993 – 1996, 1997 – 1998  
Liskow & Lewis  
701 Poydras Street, Suite 5000  
New Orleans, Louisiana 70139  
Associate Attorney

1998 – 2005  
The Honorable Emily C. Hewitt (currently Chief Judge)  
United States Court of Federal Claims  
National Courts Building  
717 Madison Place, NW, Suite 617  
Washington, DC 20005  
Career Law Clerk

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have mediated four vaccine claims that resulted in awards of compensation to petitioners.

Niazi v. Sec'y of Health & Human Servs., No. 01-617V  
Assisted the parties in resolving a petitioner's claim that the hepatitis B vaccine she received caused her to develop chronic fatigue syndrome.

Hayes v. Sec'y of Health & Human Servs., No. 06-738V  
Assisted the parties in resolving a claim that the influenza vaccine petitioner received caused him to suffer various neurological injuries.

Taylor v. Sec'y of Health & Human Servs., No. 07-458V  
Assisted the parties in resolving a petitioner's claim that he developed Guillain Barre Syndrome as a result of an influenza vaccine he received.

Davey v. Sec'y of Health & Human Servs., No. 11-794V  
Assisted the parties in resolving a petitioner's claim that the human papillomavirus (HPV) vaccines she received caused her to suffer neurological and gastrointestinal injuries.



## b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

I began in private practice at Liskow & Lewis in 1993, following a one-year clerkship term. The areas of focus during my tenure with the firm were environmental law, toxic tort litigation, consultation regarding patent infringement claims, and oil and gas regulatory work. I researched compliance issues concerning water and air emissions and disclosure issues regarding the disposal of hazardous materials. I drafted opinion letters for various clients with either environmental regulatory compliance concerns or concerns regarding potential patent infringement by their competitors. I drafted cease and desist letters for clients concerned about infringing competitors. I researched oil and gas lease terms and payment history for clients with concerns about receiving proper royalties. I researched insurance coverage issues for clients with potential toxic tort liability and prepared memoranda that were incorporated into either opinion letters or summary judgment briefing.

While working at the firm, I was invited to complete an unexpired clerkship term from 1996 to 1997. Upon completion of that clerkship term, I returned to the firm.

In 1998, I began a seven-year term of service as a federal law clerk preparing draft opinions involving the diverse areas of subject matter considered by the Court of Federal Claims, including military pay, takings, contracts, and bid protests. I maintained case files and reviewed case submissions to make recommendations regarding next steps. I gathered case materials for trial and provided statements regarding case posture for status conferences.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

The clients with whom I worked most closely at the firm were petrochemical companies, shipping companies, and the Honorable Kathleen Blanco, then a commissioner with the Louisiana Public Service Commission. For these clients, I researched issues affecting natural gas providers as well as matters involving royalties from oil and gas leases, environmental restrictions and infractions, and potential patent infringement claims.

I did not have clients during my tenure as a career law clerk with the Court of Federal Claims.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

While in private practice, my responsibilities were split between providing client advice and counseling and conducting depositions in support of the asbestos litigation the firm was handling. Toward the end of my tenure in private practice, I occasionally appeared in court to argue various motions in connection with the asbestos litigation.

As a career law clerk, I routinely supported the judge in preparation for various bench trials.

- i. Indicate the percentage of your practice in:

- |                             |     |
|-----------------------------|-----|
| 1. federal courts:          | 70% |
| 2. state courts of record:  | 30% |
| 3. other courts:            | 0%  |
| 4. administrative agencies: | 0%  |

- ii. Indicate the percentage of your practice in:

- |                          |      |
|--------------------------|------|
| 1. civil proceedings:    | 100% |
| 2. criminal proceedings: | 0%   |

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have not tried any cases in courts of record.

- i. What percentage of these trials were:

- |              |    |
|--------------|----|
| 1. jury:     | 0% |
| 2. non-jury: | 0% |

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe

in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

I practiced as an attorney during the years of 1993 to 1996 and 1997 to 1998, as an Associate with Liskow & Lewis. Most of my work with the firm pertained to client counseling. The litigation with which I was involved involved the representation of Todd Shipyards, its executives and its insurers. Todd Shipyards was one of the defendants in the multi-party asbestos litigation brought by former shipyard workers in New Orleans, Louisiana in Civil District Court. The litigation involved a group of cases before various courts involving numerous counsels for plaintiffs and defendants. See Walls v. Am. Optical Corp., No. 478-932 (La. Civ. Dist. Ct. Parish of Jefferson) (Jacob L. Karno, J.) (on best knowledge, this case was filed in 1995); Meredith v. Asbestos Corp., No. 95-12312 (La. Civ. Dist. Ct. Parish of Orleans Aug. 18, 1995) (Richard J. Ganucheau, J.); and Perque v. Avondale Indus., No. 93-677 (La. Civ. Dist. Ct. Parish of Orleans) (Roland L. Belsome, J.). See also Landry v. Avondale Industries, Inc., 864 So.2d 117 (La. 2003); Meredith v. Asbestos Corp., Ltd., 707 So.2d 1334 (La.App. 4 Cir. 1998); Walls v. American Optical Corp., 703 So.2d 800 (La.App. 5 Cir. 1997).

I managed a significant document review effort in connection with this toxic tort action. I prepared and maintained the privileged documents log for that case, conducted a score of depositions, and drafted portions of the summary judgment motions that narrowed the case issues for trial. Our client was ultimately dismissed as a defendant.

Counsel for Plaintiffs:	Joseph Bruno Bruno & Bruno 855 Baronne Street New Orleans, LA 70113 (504) 525-1335  Burton LeBlanc, IV LeBlanc, Maples & Waddell, LLC 201 Saint Charles Avenue, Suite 3800 New Orleans, LA 70170 (504) 581-2375
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Gerolyn Roussel  
Roussel & Clement  
1714 Cannes Drive  
La Place, LA 70068  
(985) 651-6591

Counsel for Defendants:

Gene Fendler  
Liskow & Lewis  
One Shell Square  
701 Poydras Street, Suite 5000  
New Orleans, LA 70139  
(504) 581-7979

James Hailey, Jr.  
Hailey, McNamara, Hall, Larmann & Papale, L.L.P.  
One Galleria Boulevard, Suite 1400  
Metairie, Louisiana 70001  
(504) 836-6500

Brian Bossier  
Blue, Williams  
3421 North Causeway Boulevard, Suite 900  
Metairie, Louisiana 70002  
(504) 831-4091

Tom Tyner  
Aultman, Tyner, Ruffin & Yarbrough  
Hertz Texaco Center  
400 Poydras Street, Suite 1900  
New Orleans, LA 70130  
(504) 528-9616

Michael Cali  
Frilot, Partridge & Kohnke  
1100 Poydras Street, Suite 3600  
New Orleans, LA  
(504) 599-8000

James Garner  
McGlinchey Stafford  
601 Poydras Street, 12th Floor  
New Orleans, LA 70130  
(504) 586-1200

Mary Dumestre  
Stone, Pigman, Walther, Wittmann L.L.C.

546 Carondelet Street  
New Orleans, LA 70130  
(504) 581-3200

Lynn Luker  
Deutsch, Kerrigan & Stiles  
755 Magazine Street  
New Orleans, LA 70130  
(504) 581-5141

Susan Kohn  
Simon, Peragine, Smith & Redfearn  
1100 Poydras Street, 30th Floor  
New Orleans, LA 70163  
(504) 569-2030

Scott Hackenberg  
Montgomery, Barnett, Brown, Read  
1100 Poydras Street  
New Orleans, LA 70163  
(504) 585-3200

Counsel overseeing this  
litigation for the firm was:

Scott C. Seiler  
Liskow & Lewis  
701 Poydras Street, Suite 5000  
New Orleans, Louisiana 70139  
(504) 556-4159

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

During my tenure at the firm, I advised a number of our petrochemical companies of the scope of potential fines likely to be imposed by federal and state authorities for various water, air, and hazardous material regulatory violations.

As a special master, I have participated in a significant revision to the Guidelines for Practice under the National Vaccine Injury Compensation Program, which is forthcoming. This document provides practical guidance to practitioners and self-represented litigants with Program claims.

Also as a special master, I have also served on the Technology Committee of the Court of Federal Claims.

I have not performed any lobbying activities.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

Legal Research and Writing, Senior Fellow, Tulane University Law School, 1991 to 1992. In this capacity, I taught first year law students how to write persuasive and well-reasoned legal memoranda. I do not have a copy of the syllabus.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have made no arrangements for deferred income or future benefits to be derived from previous professional or business relationships.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I do not have any such plans, commitments, or agreements.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

Vaccine claims that were previously on my docket as a special master would present a conflict of interest if I were to be confirmed. Were I assigned those cases on review, I would recuse myself. I do not anticipate any other conflicts, but I would carefully review each assigned case for potential conflicts.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed, I would conduct a conflict check with each case assigned to me to ensure that I have no conflict of interest. To evaluate whether a potential conflict exists, I would comply with the relevant federal statutes and follow the guidance provided by the Code of Conduct for United States Judges and any applicable federal ethics opinions as well as the practices of the United States Court of Federal Claims. Were I to identify a conflict of interest, I would recuse myself from the case promptly.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I served two years as the court-appointed lawyer in Juvenile Court in Orleans Parish, Louisiana for three children in foster care. That appointment required that I monitor the progress of the children and represent their interests in the proceedings that were initiated to terminate the parental rights of the children's biological parents. I visited with the children several hours a month, and I prepared for and attended all of the court proceedings over the course of the two-year appointment.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department

regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In January 2013, I received a call from an official from the Office of Legal Policy at the Department of Justice, asking whether I would be interested in serving on the Court of Federal Claims. I have been in contact with officials from the Office of Legal Policy since that time. On February 12, 2013, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On March 19, 2013, the President submitted my nomination to the Senate

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.



AO 10  
Rev. 1/2012

**FINANCIAL DISCLOSURE REPORT  
NOMINATION FILING**

*Report Required by the Ethics  
in Government Act of 1978  
(5 U.S.C. app. §§ 101-111)*

<b>1. Person Reporting (last name, first, middle initial)</b> Campbell-Smith, Patricia E.	<b>2. Court or Organization</b> Court of Federal Claims	<b>3. Date of Report</b> 03/19/2013
<b>4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)</b>  Judge	<b>5a. Report Type (check appropriate type)</b> <input checked="" type="checkbox"/> Nomination      Date 03/19/2013 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final <b>5b.</b> <input type="checkbox"/> Amended Report	<b>6. Reporting Period</b>  01/01/2012 to 03/04/2013
<b>7. Chambers or Office Address</b>  Office of Special Masters 1401H Street, N.W., Suite 1050 Washington, DC 20005		
<b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Insert signature on last page.		

**I. POSITIONS.** (Reporting individual only; see pp. 9-13 of filing instructions.)

☒ NONE (No reportable positions.)

<u>POSITION</u>	<u>NAME OF ORGANIZATION/ENTITY</u>
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____

**II. AGREEMENTS.** (Reporting individual only; see pp. 14-16 of filing instructions.)

☒ NONE (No reportable agreements.)

<u>DATE</u>	<u>PARTIES AND TERMS</u>
1. _____	_____
2. _____	_____
3. _____	_____

**FINANCIAL DISCLOSURE REPORT**  
 Page 2 of 6

Name of Person Reporting	Date of Report
Campbell-Smith, Patricia E.	03/19/2013

**III. NON-INVESTMENT INCOME.** (Reporting individual and spouse; see pp. 17-24 of filing instructions.)

**A. Filer's Non-Investment Income**
☒ NONE (No reportable non-investment income.)

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.			
2.			
3.			
4.			

**B. Spouse's Non-Investment Income** - If you were married during any portion of the reporting year, complete this section.  
 (Dollar amount not required except for honoraria.)

☒ NONE (No reportable non-investment income.)

	DATE	SOURCE AND TYPE
1.		
2.		
3.		
4.		

**IV. REIMBURSEMENTS** — transportation, lodging, food, entertainment.  
 (Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE (No reportable reimbursements.)

	SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1.	Exempt				
2.					
3.					
4.					
5.					

**FINANCIAL DISCLOSURE REPORT**  
 Page 3 of 6

Name of Person Reporting	Date of Report
Campbell-Smith, Patricia E.	03/19/2013

**V. GIFTS.** *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*
☐ NONE *(No reportable gifts.)*

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.	Exempt		
2.			
3.			
4.			
5.			

**VI. LIABILITIES.** *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*
☐ NONE *(No reportable liabilities.)*

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.	Bank of America	credit card	K
2.	Sidwell Friends School	tuition	None
3.			
4.			
5.			

**FINANCIAL DISCLOSURE REPORT**  
 Page 4 of 6

Name of Person Reporting	Date of Report
Campbell-Smith, Patricia E.	03/19/2013

**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. M&T Bank - cash accounts	A	Interest	J	T					
2. New York Life Insurance - whole life	A	Dividend	O	W					
3.									
4.									
5.									
6.									
7.									
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 Q = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)					
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value				

**FINANCIAL DISCLOSURE REPORT**  
Page 5 of 6

Name of Person Reporting	Date of Report
Campbell-Smith, Patricia E.	03/19/2013

**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.** *(Indicate part of report.)*

**FINANCIAL DISCLOSURE REPORT**

Page 6 of 6

Name of Person Reporting	Date of Report
Campbell-Smith, Patricia E.	03/19/2013

**IX. CERTIFICATION.**

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: s/ Patricia E. Campbell-Smith

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
Suite 2-301  
One Columbus Circle, N.E.  
Washington, D.C. 20544

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		11	800	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities				Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable			
Real estate owned				Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		18	000				
Cash value-life insurance		27	440				
Other assets itemize:							
Thrift Savings Plan		80	923				
IRA (cash)							
				Total liabilities			0
				Net Worth		138	163
Total Assets		138	163	Total liabilities and net worth		138	163
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

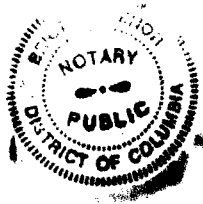
AFFIDAVIT

I, Patricia E. Campbell-Smith, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

March 19, 2013  
(DATE)

Patricia E. Campbell-Smith  
(NAME)

Christie Jones  
(NOTARY)



**CHRISTIE JONES**  
**NOTARY PUBLIC, DISTRICT OF COLUMBIA**  
**MY COMMISSION EXPIRES OCT. 31, 2013**



Senator FRANKEN. Thank you all for standing. You may sit. I hope you are very proud of Ms. Campbell-Smith.

Why don't you proceed with your opening statement.

Ms. CAMPBELL-SMITH. I have none. Thank you. I waive.

Senator FRANKEN. Okay. Well, then, Ms. Kaplan, could you introduce your friends and family?

**STATEMENT OF ELAINE D. KAPLAN, NOMINEE TO BE A JUDGE  
OF THE U.S. COURT OF FEDERAL CLAIMS**

Ms. KAPLAN. Yes, thank you, Mr. Chairman, and I appreciate the Committee holding this hearing today.

I also want to thank the President for honoring me with this nomination. And I would also like to acknowledge and thank my friends and family, some of whom are here and others of whom are watching the Webcast, for their love and support.

In particular, I wanted to thank and acknowledge my partner of 27 years, Kay Haller, and our two beautiful daughters, Rosie and Chloe, both of whom are off at college, I hope studying for final exams, and so could not be here in person.

Thank you.

Senator FRANKEN. Well, watching the Webcast and then studying for final exams.

[Laughter.]

Ms. KAPLAN. Priorities are important.

Senator FRANKEN. Yes. Well, congratulations to them.

Ms. KAPLAN. I have no opening statement.

[The biographical information of Ms. Kaplan follows:]

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).

Elaine Debra Kaplan

2. **Position:** State the position for which you have been nominated.

Judge, United States Court of Federal Claims

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

U.S. Office of Personnel Management  
Office of the General Counsel  
1900 E Street, NW  
Suite 7353  
Washington, DC 20415

4. **Birthplace:** State year and place of birth.

Brooklyn, New York; 1955

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1976 – 1979, Georgetown University Law Center; J.D. (*cum laude*), 1979  
1972 – 1976, State University of New York at Binghamton; B.A., 1976

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2009 – Present  
U.S. Office of Personnel Management  
Office of the General Counsel  
1900 E Street, NW

Suite 7353  
Washington, DC 20415  
General Counsel

2004 – 2011  
American University  
School of Public Affairs  
Watkins Building, Room 117  
4400 Massachusetts Avenue, NW  
Washington, DC 20016  
Adjunct Faculty

2004 – 2009  
National Treasury Employees Union  
1750 H Street, NW  
Washington, DC 20006  
Senior Deputy General Counsel

2003 – 2004  
Bernabei and Katz, PLLC (since disbanded)  
1773 T Street, NW  
Washington, DC 20009  
Of Counsel

1998 – 2003  
U.S. Office of Special Counsel  
1730 M Street, NW  
Washington, DC 20009  
Special Counsel

1984 – 1998  
National Treasury Employees Union  
1750 H Street, NW  
Washington, DC 20006  
Deputy General Counsel (1989 – 1998)  
Deputy Director of Litigation (1988)  
Assistant Director of Litigation (1987 – 1988)  
Assistant Counsel (1984 – 1987)

1983 – 1984  
State and Local Legal Center  
444 North Capitol Street, NW  
Washington, DC 20001  
Staff Attorney

1979 – 1983  
Office of the Solicitor  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20001  
Attorney

1979  
Law Offices of Martin Sterenbuch (I believe that Mr. Sterenbuch has since retired)  
Washington, DC  
Law Clerk

1978 – 1979  
Karr and Lyons (no longer in existence)  
Washington, DC  
Law Clerk

Summer 1978  
Association of Trial Lawyers of America  
(now American Association for Justice)  
777 Sixth Street, NW  
Washington, DC 20001  
Law Clerk

Summer 1977  
U.S. Railway Association (agency no longer in existence)  
Washington, DC  
Law Clerk

Other Affiliations (uncompensated):

2001 – 2003  
Journal of Public Inquiry  
No physical address  
Board Member

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the United States military. I was not required to register for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Connie Morella Whistleblower Award (June 2003)  
 Senior Editor, American Criminal Law Review (1977 – 1979)  
 Phi Beta Kappa (1976)  
 New York Regents Scholar (1972 – 1976)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Administrative Conference of the United States (2009 – Present)

Gay and Lesbian Attorneys of Washington, DC (approximately 1995 – 1997)

Women's Bar Association (early 1980s)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

District of Columbia, 1979

There has been no lapse in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States, 1984  
 United States Court of Appeals for the D.C. Circuit, 1985  
 United States Court of Appeals for the Federal Circuit, 1988  
 United States Court of Appeals for the Second Circuit, 1991  
 United States Court of Appeals for the Third Circuit, 1991  
 United States Court of Appeals for the Fourth Circuit, 1982  
 United States Court of Appeals for the Sixth Circuit, 1992  
 United States Court of Appeals for the Seventh Circuit, 1991  
 United States Court of Appeals for the Ninth Circuit, 1989  
 United States District Court for the District of Columbia, 1980

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Friends of the National Zoo (several years since the 1990s)

Gay and Lesbian Parents International (1995 – 1997)

Human Rights Campaign Fund (1991 – 1993)

Journal of Public Inquiry  
Board Member (2001 – 2003)

Montgomery County Road Runners Association (1997, 2002, 2004)

National Gay and Lesbian Task Force (1993 – 1996)

P-Flag (Parents and Friends of Lesbians and Gays) (1995 – 1997)

In addition, at various times, I have been a member of the Parent Teacher Associations at my daughters' elementary, junior high, and high schools.

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed in response to 11a currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin.

12. **Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

To answer this question, I have searched my files and papers and conducted an internet search for responsive materials and information. I have tried to compile as complete a list as possible, but it is possible that there exists other published material that I have not been able to remember or identify.

Barbara A. Atkin, Elaine Kaplan & Gregory O'Duden, *Wedging Open the Courthouse Doors: Federal Employee Access to Judicial Review of Constitutional and Statutory Claims*, 12 Emp. Rts. & Emp. Pol'y J. 233 (2008). Copy supplied.

Elaine Kaplan & Tim Hannapel, *Reinvigorating the U.S. Office of Special Counsel: Suggestions for the Next Administration*, American Constitution Society Issue Brief (October 2008). Copy supplied.

Letter to the Editor, *About My Tenure*, American Spectator, April 19, 2005. Copy supplied.

Elaine Kaplan & Tim Hannapel, *Hear the Whistle Blow: Companies Should Welcome, Not Vilify, Newly Protected Informants*, Legal Times, October 7, 2002. Copy supplied.

Letter to the Editor, *More on Mr. Ashcroft*, Washington Post, January 27, 2001. Copy supplied.

Elaine Kaplan, *The International Emergence of Legal Protections for Whistleblowers*, Journal of Public Inquiry (Fall/Winter 2001). Copy supplied.

Letter to the Editor, *Protecting Federal Whistle-Blowers*, Washington Post, September 6, 2000. Copy supplied.

Letter to the Editor, *Blowing the Whistle on the INS*, Dallas Magazine (July 2000). Copy supplied.

Elaine Kaplan, *Protecting the Merit System: The Role of the Special Counsel*, Society of Federal Labor Relations Professionals Reporter, Vol. 99, No. 3 (Fall 1999). Copy supplied.

Letter to the Editor, *We Protect the Whistle-Blowers*, Washington Post, August 31, 1999. Copy supplied.

Elaine Kaplan, *Delays Aside, OSC Shields Many Employees*, Federal Times, July 26, 1999. Copy supplied.

Letter to the Editor, *Federal Employees' Political Contributions*, Wall Street Journal, May 10, 1999. Copy supplied.

Letter to the Editor, *Our Job: Protect All Whistleblowers*, Wall Street Journal, April 1, 1999. Copy supplied.

Elaine Kaplan & Lois G. Williams, *Will Employees' Rights Be the First Casualty of the War on Drugs?*, 36 U. Kansas. L. Rev. 755 (1988). Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

To answer this question, I have searched my files and papers and conducted an internet search for responsive materials and information. I also requested that the Office of Special Counsel conduct a search to supply any responsive materials that I would have prepared or that would have been prepared on my behalf during my tenure as Special Counsel. I have tried to compile as complete a list as possible, but it is possible that there exists other material that I have not been able to remember or identify.

Annual Performance Report of the U.S. Office of Special Counsel, 1999-2002, Reports supplied. Report appendices are available at [http://osc.gov/RR\\_GovernmentPerformanceResultsActReports.htm](http://osc.gov/RR_GovernmentPerformanceResultsActReports.htm).

Annual Report of the U.S. Office of Special Counsel on Freedom of Information Act (FOIA) Activities, 1998-2002. Reports supplied.

A Report to Congress from the U.S. Office of Special Counsel, 1998-2002. Reports supplied.

Report of the U.S. Office of Special Counsel in accordance with the Federal Managers' Financial Integrity Act and the Inspector General Act, October, 31, 2002. Report supplied.

Commercial Activities Inventory of the U.S. Office of Special Counsel, September 11, 2001. Report supplied.

Report of the U.S. Office of Special Counsel as required by the the Federal Managers' Financial Integrity Act and the Inspector General Act, October 30, 2000. Report supplied.

Report of the U.S. Office of Special Counsel in accordance with Public Law 106-58, January 10, 2000. Report supplied.



Report of the U.S. Office of Special Counsel in accordance with the Federal Managers' Financial Integrity Act, December 23, 1998. Report supplied.

Report of the U.S. Office of Special Counsel as required by the Inspector General Act, November 2, 1998. Report supplied.

During my tenure as Special Counsel, I transmitted numerous reports of investigation to the President and to relevant Congressional oversight committees, pursuant to 5 U.S.C. § 1213(e)(3). I have provided copies of my transmittal letters to the President, which are identical to the transmittal letters sent to the Congressional oversight committees in each matter. The reports themselves were prepared by other federal agencies.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

To answer this question, I have searched my files and papers and conducted an internet search for responsive materials and information. I also requested that the Office of Special Counsel conduct a search to supply any responsive materials that I would have prepared or that would have been prepared on my behalf during my tenure as Special Counsel. I have tried to compile as complete a list as possible, but it is possible that there exists other material that I have not been able to remember or identify.

November 10, 2008: Testimony before the Committee on Legal and Human Rights, the Council of Europe, Moscow, Russia. Written testimony supplied.

On March 30, 2004, at the request of Congressman Barney Frank, I wrote him a letter concerning the interpretation of the civil service laws regarding sexual orientation discrimination in the federal workforce that the Office of Special Counsel had applied during my tenure. Copy supplied.

On March 1, 2004, I wrote a letter to then-OSC Special Counsel Scott J. Bloch requesting that he correct an erroneous assertion made in an OSC press release. Copy supplied.

Testimony of Elaine Kaplan before the Senate Committee on Governmental Affairs regarding the amendment of Chapter 23 of Title 5 of the United States Code (Nov. 12, 2003). Transcript supplied.

In 2003, I wrote a letter as Special Counsel to lawmakers about a proposed statutory amendment that would have prevented OSC from prosecuting a former federal employee for violating the Hatch Act. I have been unable to locate a copy of the letter, but press coverage is supplied.

On October 2, 2002, I wrote an email to the then Inspector General for the Department of Defense, on which I copied all members of the President's Council on Integrity and Efficiency, to respond to a report which made inaccurate assertions about the work of the Office of Special Counsel. I have been unable to locate a copy of the email, but press coverage is supplied.

On September 11, 2002, I wrote a letter to Senator Carl Levin concerning the protection of federal employee whistleblowers. Copy supplied.

On May 14, 2002, I sent Vice-President Dick Cheney, as President of the Senate, a proposed bill to extend the authorization of appropriations for the U.S. Office of Special Counsel for fiscal years 2003 through 2007. Copy supplied.

On March 14, 2002, I sent a letter to Congressman Dan Burton, Chair of the House Committee on Government Reform, responding to his request for information about the policies that the U.S. Office of Special Counsel follows when exercising its authority to investigate Hatch Act complaints and enforce compliance with that law. Copy supplied.

Testimony of Elaine Kaplan, Special Counsel before the Senate Committee on Governmental Affairs, Subcommittee on International Security, Proliferation, and Federal Services, regarding amendments to the Whistleblower Protection Act (July 25, 2001). Transcript supplied.

On June 21, 2000, I sent a letter to several members of Congress that described the U.S. Office of Special Counsel's proposal to reprogram \$185,100 in Fiscal Year 2000 appropriated funds. Copy supplied.

Testimony of Elaine Kaplan before the House Committee on Veterans' Affairs, Subcommittee on Oversight and Investigations, regarding whistleblower retaliation at the Department of Veterans Affairs (March 11, 1999). Transcript supplied.

Testimony of Elaine Kaplan before the Senate Committee on Governmental Affairs regarding my nomination to be Special Counsel of the U.S. Office of Special Counsel (March 30, 1998). Transcript supplied.

Testimony of Elaine Kaplan before the Senate Committee on Appropriations, Subcommittee on Treasury, Postal Service, and General Government, regarding oversight hearings on the implementation of federal employee drug testing programs (February 19, 1991). Transcript supplied.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the

date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

To answer this question, I have searched my files and papers and conducted an internet search for responsive materials and information. I have tried to compile as complete a list as possible, but it is likely that there were speaking engagements and conferences in which I participated but for which I have not retained any records and I am not able to remember or identify. For example, I did not keep any records of speeches or talks that I might have given before 1998, when I began my term as Special Counsel, although I do recall generally that I spoke to several conferences on behalf of my then-employer, the National Treasury Employees Union concerning issues related to urinalysis drug testing of employees, which the Union was challenging in court. I also taught one hour classes attended by union officers at several training conferences that were held by NTEU. The courses concerned the Hatch Act and a variety of labor relations issues.

January 18, 2013: Remarks at Hispanic Roundtable, OPM Headquarters, Washington, DC. Notes supplied.

January 18, 2013: Remarks at Disability Roundtable, OPM Headquarters, Washington, DC. Notes supplied.

October 31, 2012: Panel presentation at Out and Equal Conference, Baltimore, Maryland, "Developments for the LGBT Community within the Federal Government." Video is available at:  
<http://www.youtube.com/watch?v=arUgaKfkjLs>.

September 19, 2012: Panel presentation at the White House LGBT Youth Conference, Washington, DC. Notes supplied.

September 5, 2012: Remarks at Worklife Symposium, Washington, DC. Video is available at: <http://www.youtube.com/watch?v=pvt8L3TwRh4>.

April 28, 2012: Panel Presentation at the White House LGBT Conference on Families, Minneapolis, Minnesota. Notes supplied and video is available at: [http://www.youtube.com/watch?v=\\_OSiY5hPqHE](http://www.youtube.com/watch?v=_OSiY5hPqHE).

February 2, 2012: Remarks at Department of Treasury Speaker Series Event, Washington, DC. Notes supplied.

May 24, 2011: Remarks at Staff Conference for the Merit Systems Protection Board, Washington, DC. Notes supplied.

November 5, 2010: Panel presentation, American Bar Association Annual Conference on Labor and Employment Law, Chicago, Illinois, "What's Hot in 2010 in Federal Sector Personnel and Labor Law." I discussed OPM initiatives including hiring reform, our veterans employment initiative, and the extension of benefits to federal employees' domestic partners. I have no notes, transcript, or recording. The ABA's address is 740 15th Street, NW, Washington, DC 20005.

October 7, 2010: Remarks at Kickoff to Federal Labor Relations Authority Combined Federal Campaign, Washington, DC. Notes supplied.

September 23, 2010: Panel presentation at 28th Annual Chicago Kent School of Law Federal Sector Labor Relations and Labor Law Conference, Chicago, Illinois. I discussed OPM initiatives during the panel, including hiring reform, veterans employment, the extension of benefits to federal employees' domestic partners, and labor-management partnerships. I have no notes, transcript, or recording. The Chicago Kent School of Law Federal Sector Labor Relations and Labor Law Conference is located at 565 West Adams Street, Chicago, IL 60661.

August 27, 2010: Panel presentation at the Lavender Law Conference, Miami, Florida. Notes supplied.

July 14, 2010: Speaker at the Equal Employment Opportunity Commission's Excel Conference, Orlando, Florida. I discussed discrimination in federal employment based on sexual orientation or gender identity. Outline supplied.

June 23, 2010: Remarks at the Office of the Federal Deposit Insurance Corporation, Commemoration of Gay Pride Month, Arlington, Virginia. Notes supplied.

June 22, 2010: Remarks at the Office of the Comptroller of the Currency, Commemoration of Gay Pride Month, Washington, DC. Notes supplied.

June 10, 2010: Panel presentation, National Gay and Lesbian Journalists Association, Washington, DC. To the best of my recollection, I discussed initiatives underway at the Office of Personnel Management ("OPM") to extend benefits to same sex domestic partners of federal employees in accordance with the President's memorandum of June 2009. I have no notes, transcript, or recording. The National Gay and Lesbian Journalists Association is located at 2120 L Street NW, Suite 850, Washington, DC 20037.

May 21, 2010: Moderator, Ethics Panel, American University Key Executive Program Conference, "Extraordinary Leaders in Extraordinary Times," Washington, DC. I introduced panelists at program. I have no notes, transcript, or

recording, but press coverage is supplied. American University Key Executive Leadership Program is located at 4400 Massachusetts Avenue, NW, Watkins Building – Room G10, Washington, DC 20016.

April 16, 2010: Speaker at Luncheon for Administrative Law Judges, Chevy Chase, Maryland. Notes supplied.

April 15, 2010: Remarks to Administrative Law class at American University Law School, Washington, DC. Notes supplied.

June 30, 2009: Keynote speech, Library of Congress, LGBT Pride Month Event, Washington, DC. Notes supplied and video is available at [http://www.loc.gov/today/cyberlc/feature\\_wdesc.php?rec=4641](http://www.loc.gov/today/cyberlc/feature_wdesc.php?rec=4641).

June 23, 2009: Remarks at the Merit Systems Protection Board's Commemoration of Gay Pride Month, Washington, DC. Notes supplied.

April 22, 2009: Presentation at Meeting of ABA Committee on Federal Service Labor and Employment Law, Washington, DC. Notes supplied.

January or February 2009: Remarks at Conference on Presidential Appointments sponsored by the Gay and Lesbian Victory Institute, Washington, DC. I spoke about the process for securing a political appointment. I have no notes, transcript, or recording. The Gay and Lesbian Victory Institute is located at 1133 15th Street, NW, Washington DC.

September 18, 2008: Workshop presentation at 26th Annual Chicago Kent School of Law Federal Sector Labor Relations and Labor Law Conference, Chicago, IL. Notes and PowerPoint supplied.

June 20, 2008: "Dealing With Tough Management Issues," Presentation on the Whistleblower Protection Act, Federal Aviation Administration Executive Conference, Washington, DC. Notes and PowerPoint supplied.

September 20, 2007: Workshop presentation at 25th Annual Chicago Kent School of Law Federal Sector Labor Relations and Labor Law Conference, "Ethical Dilemmas in the Practice of Federal Sector Labor Relations and Employment Law," Chicago, Illinois. I taught a CLE course on legal ethics issues that can arise in litigating cases involving federal sector labor relations. I have no notes, transcript, or recording. The Chicago Kent School of Law Federal Sector Labor Relations and Labor Law Conference is located at 565 West Adams Street, Chicago, IL 60661.

June 2005: Panel presentation before World Bank Conference discussing the concept of whistleblowing and the protections afforded to whistleblowers in the United States, Washington, DC. Notes supplied.

September 25, 2003: Presentation at the Conscience Clause Conference, Geneva, Switzerland. I presented on the whistleblower protection laws in the United States. I have no notes, transcript, or recording. The International Labor Organization is located at 4 Rue des Morillons, Geneva, Switzerland.

September 19, 2002: Keynote speaker at 20th Annual Chicago Kent School of Law Federal Sector Labor Relations and Labor Law Conference, Chicago, Illinois. I likely discussed the work of the Office of Special Counsel. I have no notes, transcript, or recording. The Chicago Kent School of Law Federal Sector Labor Relations and Labor Law Conference is located at 565 West Adams Street, Chicago, IL 60661

August 22, 2002: Speech at Federal Dispute Resolution Conference, Desert Springs, California. My recollection is that I spoke about the work of the Office of Special Counsel. I have no notes, transcript, or recording, but press coverage is supplied. The law firm of Shaw, Bransford and Roth, which runs FDR Conferences, is located at 1100 Connecticut Avenue, NW, Washington, DC 20036.

June 20, 2002: Speech at Equal Employment Opportunity Commission, "Gay and Lesbian Awareness Month Observance," Washington, DC. I discussed procedures for challenging discrimination based on sexual orientation in the federal workplace. I have no notes, transcript, or recording. The Equal Employment Opportunity Commission is now located at 131 M Street, NE, Washington, DC 20507.

April 8, 2002: Presentation at the Twentieth Annual Judicial Conference of the Court of Appeals for the Federal Circuit, Merit Systems Protection Board Breakout Session, Washington, DC. Transcript supplied.

March 27, 2000: Panel presentation at Symposium on Employee and Labor Relations, Chicago, Illinois. I discussed the work of the Office of Special Counsel at this OPM-sponsored event. I have no notes, transcript, or recording. OPM is located at 1900 E Street NW, Washington, DC 20006.

March 8, 2000: Panel presentation for Hatch Act Symposium, Washington, DC. This was an educational program for federal employees regarding the Hatch Act, sponsored by the U.S. Office of Special Counsel. I have no notes, transcript, or recording. OSC is located at 1730 M Street, NW, Washington, DC 20009.

Mid-2000s: Speech before Conference of the World Bank and the American Society of International Law, Washington, DC. Notes supplied.

December 16, 1999: Joint Town Hall with Federal Labor Relations Authority and Office of Special Counsel, Washington, DC. I discussed the mission of the Office

of Special Counsel. I have no notes, transcript or recording. The Town Hall was sponsored by the FLRA, 1400 K Street, NW, Washington, DC 20424.

August 26, 1999: Remarks at the Federal Dispute Resolution Conference, San Antonio, Texas. Notes supplied.

June 25, 1999: Joint Town Hall with Federal Labor Relations Authority and Office of Special Counsel, Chicago, Illinois. I discussed the mission of the Office of Special Counsel. I have no notes, transcript or recording. The Town Hall was sponsored by the FLRA, 1400 K Street, NW, Washington, DC 20424

June 1999: Speech at Federal Personnel Management Institute (FPMI) Conference. I cannot recall where the conference took place. My speech concerned the Office of Special Counsel. I have no notes, transcript or recording, but press coverage is supplied. FPMI is located at 1033 North Fairfax Street, Alexandria, VA 22314.

April 1999: Presentation on the Whistleblower Protection Act, Passau, Germany. I gave a presentation on the law to overseas labor relations staff of the Department of Defense. I have no notes, transcript or recording. I cannot recall the name of the organization that sponsored the program.

March 4, 1999: Remarks at OPM's Symposium on Employee and Labor Relations, Hershey, Pennsylvania. Copy supplied.

February 24, 1999: Presentation entitled "Whistleblower Protection in the United States Government" at the Vice President's Conference on Fighting Corruption Among Justice and Security Officials, Washington, DC. Notes supplied.

May 1998: Speech to the American Bar Association Section on Federal Sector Labor and Employment Law, Washington DC. I recall that I spoke about my new position as head of the Office of Special Counsel. I have no notes, transcript, or recording. The ABA is located at 740 15th Street, NW, Washington, DC 20005.

May 1998: Speech to the Merit Systems Protection Board's Staff Conference, Washington, DC. I recall discussing my new position as head of the Office of Special Counsel and my agenda for the agency. I have no notes, transcript, or recording. The Merit Systems Protection Board is located at 1615 M Street NW, Washington, DC 20419.

1998: Keynote speaker, Annual Conference of the Office of Government Ethics, Chicago, Illinois. I spoke about the role of the Office of Special Counsel. I have no notes, transcript, or recording. The Office of Government Ethics is located at 1201 New York Avenue, NW, Washington, DC 20005.

June 12, 1997: Presentation at the Fifteenth Annual Judicial Conference of the Court of Appeals for the Federal Circuit, Merit Systems Protection Board Breakout Session, Washington, DC. Transcript supplied.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

To answer this question, I have searched my files and papers and conducted an internet search for responsive materials and information. I have tried to compile as complete a list as possible, but it is possible that there exists other material that I have not been able to remember or identify.

Interviews:

Ed O'Keefe, *Postal Service to Resume Retirement Fund Payments*, Washington Post, November 17, 2011. Copy supplied.

Alyssa Rosenberg, *The Federal Government's Same-Sex Quandary*, National Journal, July 17, 2009. Copy supplied.

*Domestic Partner Benefits: Prospects Improving*, 1500AM Fed News Radio, July 14, 2009. Audio is available at <http://www.federalnewsradio.com/index.php?nid=110&sid=1717753>.

Interview, CNSnews.com, June 30, 2009. Audio is available at <http://www.youtube.com/watch?v=jaXbHN47NJg>

Jim Rutenberg, *Outcry on Federal Same Sex Benefits*, New York Times, June 18, 2009. Copy supplied.

Alyssa Rosenberg, *Taking Exception*, Government Executive, March 1, 2009. Copy supplied.

Ari Shapiro, *Fresh Details Emerge in Special Counsel's Ouster*, National Public Radio, October 28, 2008. Copy supplied.

Robert Brodsky, *Next Special Counsel Faces an Uphill Battle*, Government Executive, October 27, 2008. Copy supplied.

*Next up at the Office of Special Counsel*, FedNewsRadio, October 24, 2008. Audio is available at <http://www.federalnewsradio.com/?nid=86&sid=1577117>.

Ari Shapiro, *Could Watchdog Office Probe Taint Justice Inquiry?*, National Public Radio, July 29, 2008. Copy supplied.



Matt Townsend, *VA's Voter Registration Ban Faces More Opposition*, ProPublica, July 23, 2008. Copy supplied.

James Sandler, *The War on Whistleblowers*, Salon.com, November 1, 2007. Copy supplied.

Daniel Pulliam, *GSA Chief Disputes Report on Hatch Act Violations*, Government Executive, June 4, 2007. Copy supplied.

Daniel Pulliam, *Governmentwide Hatch Act Probe Remains in Early Stages*, Government Executive, May 29, 2007. Copy supplied.

Daniel Pulliam, *Lawyer for GSA Chief Argues Investigative Agency is Biased*, Government Executive, May 25, 2007. Copy supplied.

Daniel Pulliam, *Early Special Counsel Report Pushed Punishment for GSA Chief*, Government Executive, May 24, 2007. Copy supplied.

Jason Miller, *How to Navigate the Hatch Act*, Federal Computer Week, May 7, 2007. Copy supplied.

Melissa Harris, *Some Say Bloch Should Be Careful*, Baltimore Sun, May 4, 2007. Copy supplied.

Stephen Labaton & Edmund L. Andrews, *White House Calls Political Briefings Legal*, New York Times, April 27, 2007. Copy supplied.

Melissa Harris, *U.S. Court Voids Labor Rules at Homeland Security Department*, Baltimore Sun, June 28, 2006. Copy supplied.

Karen Rutzick, *Unions Win Broad Victory Over DHS Labor Relations System*, Government Executive, June 27, 2006. Copy supplied.

Melissa Harris, *Merit Board Ruling Reopens 2004 Political E-Mail Case*, Baltimore Sun, June 23, 2006. Copy supplied.

*Political E-Mails Can Put Your Job at Risk, MSPB Rules*, Federal Times, June 19, 2006. Copy supplied.

Daniel Pulliam, *Investigative Agency Earns Fewer Victories for Employees*, Government Executive, February 1, 2006. Copy supplied.

Daniel Pulliam, *The Perils of Political E-mails*, Government Executive, January 20, 2006. Copy supplied.

Patrick Yoest, *DHS Appeals Court Rulings on Proposed Personnel System*, Congressional Quarterly, November 14, 2005. Copy supplied.

Stephen Barr, *Veteran's Successful Challenge Puts Outstanding Scholar Program in Jeopardy*, Washington Post, October 11, 2005. Copy supplied.

Patrick Yoest, *Oral Arguments on DHS Personnel Rules Set for Wednesday*, Congressional Quarterly, September 27, 2005. Copy supplied.

David S. Bernstein, *Fun with Adjectives*, Boston Phoenix, July 22, 2005. Copy supplied.

David E. Sanger & Richard W. Stevenson, *Bush Responds to Questioning Over Leak Case*, New York Times, July 19, 2005. Copy supplied.

*Homeland Delays New Personnel Rules*, Federal Times, July 18, 2005. Copy supplied.

Stefan Styrsky, *Gay Groups Call for OSC Director's Ouster*, San Francisco Bay Times, June 16, 2005. Copy supplied.

Fred Kuhr, *A Blind Eye to Discrimination*, The Advocate, April 12, 2005. Copy supplied.

Amelia Gruber, *Culling Complaints*, Government Executive, January 1, 2005. Copy supplied.

Amelia Gruber & Chris Strohm, *Temporarily Parked*, Government Executive, July 29, 2004. Copy supplied.

T. Shawn Taylor, *Federal Office Confirms Laws Cover Lesbian, Gay Workers*, Chicago Tribune, April 13, 2004. Copy supplied.

Marie Beaudette, *Small Agency, Big Controversy*, Legal Times, April 2, 2004. Copy supplied.

T. Shawn Taylor, *Democrats Prod Federal Office on Gay Rights*, Chicago Tribune, April 1, 2004. Copy supplied.

Janet Rabin, *Analysis: New Federal Government Rules About Workplace Discrimination*, NPR Day to Day, March 26, 2004. Transcript provided.

Stephen Barr, *Gay GOP Group Wants Web Site Data Restored*, Washington Post, March 22, 2004. Copy supplied.

Richard B. Schmitt, *Counsel Under Fire for Move on Gay Bias*, Los Angeles Times, March 20, 2004. Copy supplied.

Rob Curtis, *OSC to Study Whether Bias Law Covers Gays*, Federal Times, March 15, 2004. Copy supplied.

Stephen Barr, *Gay Rights Information Taken Off Site; New GOP Head of Agency Says He is Reviewing Material*, Washington Post, February 18, 2004. Copy supplied.

David A. Fahrenthold, *Park Police Chief Turns Down a Deal; Offer to Drop Charges Included Stricture on Talking to Media, Chambers Says*, Washington Post, January 21, 2004. Copy supplied.

David A. Fahrenthold, *Park Service Moves to Fire Police Chief Over Comments*, Washington Post, December 19, 2003. Copy supplied.

CNN, Lou Dobbs Tonight, Interview with Lisa Sylvester regarding whistleblower protection, July 25, 2003. Transcript supplied.

Tania Branigan, *Backlog of Whistleblower Cases Growing, Agency Report Says*, Washington Post, July 21, 2003. Copy supplied.

Stephen Barr, *In IRS Bias Case, Special Counsel Brings About Suspension and Settlement*, Washington Post, June 26, 2003. Copy supplied.

Stephen Barr, *Davis Suggests Calling Off Hatch Act When the Employee Leaves Civil Service*, Washington Post, February 12, 2003. Copy supplied.

Interview, FEDTALK Radio, federalnewsradio.com, January 24, 2003. The station has advised that it has not maintained any transcripts or clips of this interview.

Stephen Barr, *Even Ordinary People Can Be Whistleblowers*, Washington Post, November 3, 2002. Copy supplied.

Guy Taylor, *Worker Hailed for Blowing Whistle*, Washington Times, July 1, 2002. Copy supplied.

Interview, FEDTALK Radio, federalnewsradio.com, June 21, 2002. The station has advised that it has not maintained any transcripts or clips of this interview.

June 3, 2002: Press Conference, held jointly with Federal Aviation Administration, to announce Memorandum of Understanding providing whistleblower protection to employees of the Transportation Security Administration. Statement supplied.

Jerry Seper, *INS Backs Away From Punishing 2 Whistleblowers; Agents Get Reinstatement, Back Pay*, Washington Times, May 3, 2002. Copy supplied.

*Before Blowing Whistle, Experts Urge Preparation, Patience*, Federal Times, April 8, 2002. Copy supplied.

Philip Shenon, *F.A.A. is Accused of Ignoring Security Lapses*, New York Times, February 27, 2002. Copy supplied.

Peter Overby, *Analysis: Whistleblower Protections for New Government Airport Screeners*, NPR All Things Considered, December 10, 2001. Limited transcript supplied.

Interview, FEDTALK Radio, federalnewsradio.com, December 8, 2001. The station has advised that it has not maintained any transcripts or clips of this interview.

Joe Cantlupe, *'Fun Day' at INS Weapons Site Among Allegations in Inquiry; Civilians Said To Be Allowed to Fire Machine Guns*, San Diego Union-Tribune, October 28, 2001. Copy supplied.

Stephen Barr, *Congress Looks to Patch the Safety Net for Whistle-Blowers*, Washington Post, June 11, 2001. Copy supplied.

Katy Saldarini & Kellie Lunney, *Representation Rights*, Government Executive, June 7, 2001. Copy supplied.

Robert Pack, *Whistleblowers and the Law*, Washington Lawyer, June 2001. Copy supplied.

Brad Knickerbocker, *Once the Whistle Blows, Who Follows Up With the Reforms?*, Christian Science Monitor, December 14, 2000. Copy supplied.

December 9, 2000: Interview, FEDTALK Radio, federalnewsradio.com. I assume that this would have involved a discussion about my work at the Office of Special Counsel. The station has advised that it has not maintained any transcripts or clips of this interview.

December 6, 2000: Press Conference held at the headquarters of the Office of Special Counsel, Washington, DC, to discuss investigation substantiating whistleblower disclosures and to present Public Servant Award. Copy of statement supplied.

Steve Barr, *Federal Diary Live*, Washington Post, October 18, 2000. Copy supplied.

*OSC Rebuts Former Engineer's Vindication Claim, Issues Warning*, cyberFEDS, September 7, 2000. Copy supplied.

Jason McGarvey, *Blowing Her Own Whistle*, Georgetown Alumni Magazine, Fall 2000. Copy supplied.

Drew Long, *OSC Fights Obscurity, Understaffing, to Protect Federal Workers*, LRRP Publications, August 2000. Copy supplied.

Stephen Barr, *Office of Special Counsel Juggles Image-Building, Advising Workers on Their Rights*, Washington Post, May 21, 2000. Copy supplied.

Radio Interview, WUST-AM, September 18, 1999. The topic was the role of the Office of Special Counsel. The station has advised that it has not maintained any transcripts or clips of this interview.

*Q & A: Special Counsel Discusses Goals for Whistleblower Agency*, Government Employee Relations Reporter, March 15, 1999. Copy supplied.

Thomas Hargrove, *More Federal Employee Whistleblowers Suffer Reprisals for Pointing Out Misconduct*, Washington Times, August 3, 1998. Copy supplied.

Heather C. Bodell, *Special Counsel Kaplan Discusses Concerns About Investigations*, Government Employee Relations Reporter, June 8, 1998. Copy supplied.

Christy Harris, *Protecting Employees, Office of Special Counsel Head Wants to Improve Public Image*, Federal Times, June 8, 1998. I have been unable to locate a copy of the article.

Radio Interview, WUST-AM, June 6, 1998. Interview concerned the Office of Special Counsel. The station has advised that it has not maintained any transcripts or clips of this interview.

Laura Myers, *Government Questions 50,000 Workers About 'Good Ol' Boy Roundup*, AP Online, August 30, 1995. Copy supplied.

Laurie Asseo, *Americans Willing to Give Up Some Privacy Rights*, AP Online, July 7, 1995. Copy supplied.

Joel Achenbach & Richard Leiby, *We Find the Defendant...; The Bobbit Verdict from the Court of Public Opinion*, Washington Post, January 22, 1994. Copy supplied.

*Appeals Court Refuses to Reconsider Ruling*, AP Online, September 22, 1993. Copy supplied.

Laurie Asseo, *Court Rejects Union Bid on Leaflets at Social Security Headquarters*, AP Online, October 21, 1991. Copy supplied.

*Appeals Court Overturns USDA Testing for Off-Duty Drug Use*, Washington Post, November 18, 1990. Copy supplied.

J. Jennings Moss, *Unions Ask Federal Pay Scale Bargaining*, Washington Times, June 8, 1990. Copy supplied.

J. Jennings Moss, *Court Won't Hear Case on Retiree Address List*, Washington Times, April 17, 1990. Copy supplied.

Enrique J. Gonzales, *Court Ruling May Affect HHS' Drug-Testing Criteria*, Washington Times, March 13, 1990. Copy supplied.

John Purnell, *Unions Sue, Claim SF 86 Snoops Into Private Lives*, Washington Times, June 15, 1989. Copy supplied.

Cheryl Sullivan, *Federal Workers Fight Drug Testing*, Christian Science Monitor, January 25, 1989. Copy supplied.

E. Shiver, Jr., *Few Employees Tested for Drugs in Workplace*, Los Angeles Times, January 12, 1989. Copy supplied.

Andrea Neal, *Mandatory Drug Testing: Court Weighs Civil Liberties Objections*, 74 A.B.A. J. 58, October 1, 1988. Copy supplied.

Ruth Marcus, *Both Sides in War Over Drug Testing Claim Upper Hand in Latest Battle*, Washington Post, November 19, 1987. Copy supplied.

Nancy Lewis, *D.C. School Employee Drug Tests Set Back*, Washington Post, November 18, 1987. Copy supplied.

David S. Hilzenrath, *Federal Worker Wins Time to Pursue Bias Suit*, Washington Post, June 25, 1987. Copy supplied.

Jim Schachter, *Government Vows Private, Accurate Drug Tests*, Los Angeles Times, February 20, 1987. Copy supplied.

Matt Yancey, *Government Still Working Out Details of Drug Tests*, AP Online, December 1, 1986. Copy supplied.

Nancy Lewis, *Performance Basis Upheld in RIF Rules; Judge Here Calls System 'Rational,'* Washington Post, July 1, 1986. Copy supplied.

Press Releases: (All press releases from my tenure at the Office of Special Counsel are available at <http://www.osc.gov/pressarchives.htm>; the press releases in which I am quoted are listed below.)

Press Release, *Statement from Elaine Kaplan, OPM General Counsel*, Office of Personnel Management, December 2009. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Group Settlement of Whistleblower Retaliation Complaints Filed by Former and Current Employees of the Bighorn National Forest*, U.S. Office of Special Counsel, April 22, 2003. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Selection of Kristin Shott as Recipient of Special Counsel's Public Servant Award*, U.S. Office of Special Counsel, March 13, 2003. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Corrective and Disciplinary Action in Case Alleging Retaliatory Denial of Promotion*, U.S. Office of Special Counsel, December 19, 2002. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Settlement of Former Navy Employee's Whistleblower Complaint*, U.S. Office of Special Counsel, December 2, 2002. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Roll Out of Government-Wide Whistleblower Protection Act Program*, U.S. Office of Special Counsel, November 7, 2002. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Favorable Resolution of DeCA Whistleblower's Complaint*, U.S. Office of Special Counsel, October 31, 2002. Copy supplied.

Press Release, *U.S. Office of Special Counsel Awards the U.S. Merit Systems Protection Board 2302(c) Certification for Completion of Whistleblower Education Program*, U.S. Office of Special Counsel, September 5, 2002. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Cindy L. Snyder's Selection as Recipient of Special Counsel's Public Servant Award*, U.S. Office of Special Counsel, June 26, 2002. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Settlement of FAA Whistleblower's Complaint*, U.S. Office of Special Counsel, June 24, 2002. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Award of First Certificate of Compliance to the U.S. Office of Personnel Management under Law Requiring Agencies to Educate Employees about the Whistleblower Protection Act*, U.S. Office of Special Counsel, May 29, 2002. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Settlement in Case of Fired FAA Whistleblower Who Disclosed Information to FAA Security and the FBI Concerning September 11th Attacks*, U.S. Office of Special Counsel, May 28, 2002. Copy supplied.

Press Release, *No FEAR Signing Prompts Special Counsel to Remind Agencies of Statutory Obligation to Educate Workforce about the Whistleblower Protection Act*, U.S. Office of Special Counsel, May 20, 2002. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Favorable Resolution of Two Complaints Alleging Retaliation Against Whistleblowers by the Immigration and Naturalization Service*, U.S. Office of Special Counsel, May 2, 2002. Copy supplied.

Press Release, *U.S. Office of Special Counsel and Office of Personnel Management Launch Pilot Program to Educate Employees about the Whistleblower Protection Act*, U.S. Office of Special Counsel, March 14, 2002. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Favorable Settlement of Prohibited Personnel Practice Complaint Filed by MSPB Regional Director*, U.S. Office of Special Counsel, January 3, 2002. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Favorable Settlement of Three HUD Complaints Involving Willful Obstruction of Competition*, U.S. Office of Special Counsel, November 27, 2001. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Favorable Settlement of Case for Army Reserve Major Injured During Overseas Military Service*, U.S. Office of Special Counsel, October 9, 2001. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Significant Settlement of Whistleblower Complaints Filed Against Veterans Affairs Hospital*, U.S. Office of Special Counsel, September 27, 2001. Copy supplied.



Press Release, *Special Counsel Expresses Concern over Court's Narrow Interpretation of the Whistleblower Protection Act*, U.S. Office of Special Counsel, August 20, 2001. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Martin Andersen's Selection as Recipient of Special Counsel's Public Servant Award, and Settlement of His Prohibited Personnel Practice Complaint Against the Department of Justice*, U.S. Office of Special Counsel, July 16, 2001. Copy supplied.

Press Release, *U.S. Office of Special Counsel Reorganizes to Cut Red Tape and Provide More Efficient Service to Whistleblowers and Other Federal Employees*, U.S. Office of Special Counsel, June 4, 2001. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Establishment of Special Counsel's Public Servant Award Program and Its First Recipient, Dr. Donald Sweeney*, U.S. Office of Special Counsel, March 6, 2001. Copy supplied.

Press Release, *U.S. Office of Special Counsel and Department of Labor, Veterans' Employment and Training Service, Sign Memorandum of Understanding*, U.S. Office of Special Counsel, February 7, 2001. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces 15-Day Suspension of NASA SES Employee for Whistleblower Retaliation*, U.S. Office of Special Counsel, January 16, 2001. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Settlement of Whistleblower Complaint Against U.S. Department of Education*, U.S. Office of Special Counsel, January 9, 2001. Copy supplied.

Press Release, *U.S. Office of Special Counsel Reaches Disciplinary Action Settlement in Hatch Act Case Involving Acting HCFA Administrator*, U.S. Office of Special Counsel, December 15, 2000. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Settlement of Whistleblower Complaints Filed by Nuclear Couriers at Department of Energy's Oak Ridge National Laboratory*, U.S. Office of Special Counsel, October 2, 2000. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Favorable Settlement of Whistleblower Complaint with VA Medical Center*, U.S. Office of Special Counsel, September 27, 2000. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Favorable Settlement of Whistleblower Complaint Against Department of Veterans Affairs*, U.S. Office of Special Counsel, September 19, 2000. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Favorable Settlement of Whistleblower Complaints Against Drug Enforcement Administration*, U.S. Office of Special Counsel, September 6, 2000. Copy supplied.

Press Release, *U.S. Office of Special Counsel Reaches Disciplinary Action Settlement in Hatch Act Case Involving EPA Regional Administrator*, U.S. Office of Special Counsel, August 22, 2000. Copy supplied,

Press Release, *U.S. Office of Special Counsel Announces Favorable Settlement of Complaint Alleging Misuse of Outstanding Scholar Program and Failure to Appoint Displaced Archeologist*, U.S. Office of Special Counsel, July 25, 2000. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Favorable Settlement of Complaint Alleging Discrimination Based Upon Military Duty*, U.S. Office of Special Counsel, July 11, 2000. Copy supplied,

Press Release, *U.S. Office of Special Counsel Announces Policy Governing Stay Requests*, U.S. Office of Special Counsel, June 14, 2000. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Settlement of First Amendment Case*, U.S. Office of Special Counsel, May 16, 2000. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Favorable Settlement of Complaint Alleging Retaliation Against Employee for Filing Grievance*, U.S. Office of Special Counsel, May 16, 2000. Copy supplied.

Press Release, *U.S. Office of Special Counsel Criticizes Decision Finding It Liable for Attorney Fees in Disciplinary Action Case*, U.S. Office of Special Counsel, May 15, 2000. Copy supplied.

Press Release, *U.S. Office of Special Counsel Applauds Decision Confirming that Employees Who Disclose Violations of Hiring Rules are Protected Against Retaliation*, U.S. Office of Special Counsel, May 8, 2000. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Settlement of Disciplinary Actions Against Officials for Using Bogus Duty Stations in Illegal Hiring Scheme*, U.S. Office of Special Counsel, March 20, 2000. Copy supplied.

Press Release, *U.S. Office of Special Counsel Launches Mediation Program*, U.S. Office of Special Counsel, March 13, 2000. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Favorable Settlement of Complaint Alleging Retaliation Against Whistleblower by the Immigration and Naturalization Service*, U.S. Office of Special Counsel, March 10, 2000. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Disciplinary Action in Hatch Act Case*, U.S. Office of Special Counsel, March 6, 2000. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Educational Program on the Hatch Act and Political Activity by Federal Employees*, U.S. Office of Special Counsel, February 22, 2000. Copy supplied.

Press Release, *U.S. Office of Special Counsel Wins Backpay and Reinstatement for INS Employee in First Amendment Case*, U.S. Office of Special Counsel, February 3, 2000. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Reduction in Federal Medicaid Payment to State of Connecticut in Hatch Act Settlement*, U.S. Office of Special Counsel, January 18, 2000. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Favorable Settlement of Whistleblower Retaliation Case*, U.S. Office of Special Counsel, December 22, 1999. Copy supplied.

Press Release, *U.S. Office of Special Counsel Provides Training Aid for Agencies Designed to Prevent Prohibited Personnel Practices*, U.S. Office of Special Counsel, August 2, 1999. Copy supplied.

Press Release, *U.S. Office of Special Counsel Praises Board Ruling that Rejects Narrow Interpretation of Whistleblower Protection Act*, U.S. Office of Special Counsel, July 14, 1999. Copy supplied.

Press Release, *U.S. Office of Special Counsel Disappointed by Ruling that Federal Whistleblowers Continue to Have No Protection in Security Clearance Cases*, U.S. Office of Special Counsel, June 17, 1999. Copy supplied.

Press Release, *The Federal Labor Relations Authority and the U.S. Office of Special Counsel Hold First Joint Town Meeting*, U.S. Office of Special Counsel, June 17, 1999. Copy supplied.

Press Release, *Lawyers Prove Their Lung Power*, U.S. Office of Special Counsel, June 16, 1999. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Settlement of Unfair Hiring Practice Case*, U.S. Office of Special Counsel, June 10, 1999. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Favorable Settlement of Complaint Alleging Illegal Dismissal of Wildlife Biologist by Fish & Wildlife Service*, U.S. Office of Special Counsel, June 2, 1999. Copy supplied.

Press Release, *U.S. Office of Special Counsel Wins Corrective Action in Veterans Affairs' Whistleblower Case*, U.S. Office of Special Counsel, May 21, 1999. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Corrective and Disciplinary Action Settlement in Whistleblower Retaliation Case Concerning Public Safety*, U.S. Office of Special Counsel, May 12, 1999. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Favorable Settlement of Personnel Violations in Veterans' Preference Case*, U.S. Office of Special Counsel, April 15, 1999. Copy supplied.

Press Release, *U.S. Office of Special Counsel Wins Corrective and Disciplinary Action in INS Whistleblower Case*, U.S. Office of Special Counsel, April 8, 1999. Copy supplied.

Press Release, *U.S. Office of Special Counsel Obtains Precedent-Setting Ruling in Whistleblower Retaliation Case Brought Against Supervisor*, U.S. Office of Special Counsel, March 31, 1999. Copy supplied.

Press Release, *Office of Special Counsel Announces New Outreach Initiatives*, U.S. Office of Special Counsel, February 11, 1999. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Improved Web-Site and New Internet Address: [www.osc.gov](http://www.osc.gov)*, U.S. Office of Special Counsel, February 1, 1999. Copy supplied.

Press Release, *U.S. Office of Special Counsel Wins Discipline Against Supervisor Who Violated the Whistleblower Protection Act*, U.S. Office of Special Counsel, January 29, 1999. Copy supplied.

Press Release, *U.S. Office of Special Counsel Requests Oral Argument in Key Case Affecting Whistleblower Rights of Federal Employees Who Hold Security Clearances*, U.S. Office of Special Counsel, January 21, 1999. Copy supplied.

Press Release, *U.S. Office of Special Counsel Wins Back Pay and Reversal of Illegal Suspension for SES Employee*, U.S. Office of Special Counsel, November 24, 1998. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Favorable Settlement of Whistleblower Reprisal Complaint Against Treasury's Office of Inspector General*, U.S. Office of Special Counsel, October 22, 1998. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Favorable Settlement of Whistleblower's Complaint in Alleged Child Abuse Case*, U.S. Office of Special Counsel, September 17, 1998. Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held judicial office.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? \_\_\_\_\_

- i. Of these, approximately what percent were:

jury trials:	_____ %
bench trials:	_____ % [total 100%]
civil proceedings:	_____ %
criminal proceedings:	_____ % [total 100%]

- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have never served as a judge.

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

Special Counsel, U.S. Office of Special Counsel, 1998 – 2003, appointed by President William Clinton, confirmed by the U.S. Senate.

Team Lead, Government Operations Group, Obama Transition Team, 2008.

I have never been a candidate for elective office or a nominee for appointed office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have never held a position in or rendered services to a political party or election committee. I solicited the attendance of friends and colleagues at several fundraisers held during the 2008 Presidential campaign, first for then-Senator Hillary Clinton during 2007 and early 2008, and subsequently for then-Senator Barack Obama during the fall of 2008. I believe that I also solicited the attendance of friends at a fundraiser for then-Senator John Kerry during the 2004 election cycle.

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I have never served as a clerk to a judge.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1979 – 1983  
Office of the Solicitor  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20001  
Attorney

1984  
State and Local Legal Center  
444 North Capitol Street  
Washington, DC 20001  
Staff Attorney

1984 – 1998  
 National Treasury Employees Union  
 1750 H Street, NW  
 Washington, DC 20006  
 Deputy General Counsel (1989 – 1998)  
 Deputy Director of Litigation (1988)  
 Assistant Director of Litigation (1987 – 1988)  
 Assistant Counsel (1984 – 1987)

1998 – 2003  
 U.S. Office of Special Counsel  
 1730 M Street, NW  
 Washington, DC 20009  
 Special Counsel

2003 – 2004  
 Bernabei and Katz, PLLC (since disbanded)  
 1773 T Street, NW  
 Washington, DC 20009  
 Of Counsel

2004 – 2009  
 National Treasury Employees Union  
 1750 H Street, NW  
 Washington, DC 20006  
 Senior Deputy General Counsel

2009 – present  
 U.S. Office of Personnel Management  
 Office of the General Counsel  
 1900 E Street, NW  
 Suite 7353  
 Washington, DC 20415  
 General Counsel

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have never served as a mediator or arbitrator.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.



My first legal job after graduation from law school in 1979 was with the Office of the Solicitor, United States Department of Labor. In October of 1979, I began working as a staff attorney in the Black Lung Section of the Division of Employee Benefits, where I remained through 1981. In this position I represented the Director of the Office of Workers Compensation Programs in administrative hearings held nationwide in cases arising under the Black Lung Benefits Act, drafted briefs for consideration by the Benefits Review Board, an administrative appeals body, and briefed and argued several cases in the federal courts of appeals. In 1981, I was one of several attorneys selected by the Solicitor of Labor to be part of the staff of a new division (the Division of Special Appellate and Supreme Court Litigation) created to handle the Department of Labor's most complex and important cases in the federal courts of appeals, all cases raising significant constitutional issues, and all of the Department of Labor's Supreme Court work (in coordination with the Office of the Solicitor General). In this position I drafted briefs and presented oral argument on behalf of the Department of Labor in cases in the federal courts of appeals. I also drafted petitions for certiorari, oppositions to petitions for certiorari, and merits briefs for the United States Supreme Court, which were reviewed and edited as needed by the Office of the Solicitor General.

I left the Department of Labor at the end of 1983 and took a job with the then newly-established State and Local Legal Center, a nonprofit organization dedicated to improving the quality of advocacy on behalf of state and local governments in the Supreme Court. All of my time was spent either drafting amicus briefs on behalf of state and local government interests or making recommendations regarding whether the Center should file such briefs.

I was employed by the National Treasury Employees Union (a federal sector labor organization) during two separate periods in my legal career. In 1984, I started working at NTEU as a staff attorney and rose over the next 14 years to supervisory positions as Assistant Director of Litigation, Deputy Director of Litigation and then Deputy General Counsel. I left NTEU in 1998 after I was appointed Special Counsel (see below), and then returned in August 2004 as Senior Deputy General Counsel, which I remained until March 2009. At NTEU I assisted and advised the General Counsel in his management of the Office of General Counsel, and conducted litigation at all levels of the federal court system as well as before arbitrators and administrative tribunals and on one or two occasions in state court. I personally briefed and argued (or supervised the briefing and argument of) scores of cases at all levels of the federal courts.

In May 1998, I began a five-year term as the head of the U.S. Office of Special Counsel (OSC), which investigates and prosecutes complaints by federal employees who allege the commission of illegal employment

practices, with an emphasis on reprisal for whistleblowing. OSC also enforces the Hatch Act and operates as a secure channel for federal employee whistleblowers through which their disclosures are investigated and the results of those investigations made public. OSC investigations are often politically sensitive, and may involve high level executive branch officials. While at OSC, I did not personally appear in court or before administrative tribunals. I occasionally reviewed briefs that staff submitted to the Merit Systems Protection Board; the Department of Justice represented OSC in court. I provided input to DOJ on several briefs that involved OSC which were filed in the district courts and courts of appeals.

From June 2003 through August 2004, I was "of counsel" at the law firm of Bernabei and Katz, which specialized in civil rights and employment matters. I provided advice and representation to a largely private sector clientele in cases involving whistleblower retaliation, race and gender discrimination, sexual harassment, wrongful discharge, the Family Medical Leave Act, and other employment-related matters. The vast majority of my practice involved advising clients in connection with employment related matters, representing clients prior to the initiation of litigation, and attempting to secure a settlement of their claims without resort to litigation.

In March 2009, I was appointed General Counsel of the United States Office of Personnel Management, where I currently serve. As General Counsel, I provide legal and policy advice to the Director and officials across the Executive Branch regarding all aspects of federal personnel management and all other matters within the jurisdiction of OPM. I am OPM's Designated Agency Ethics Officer. I direct a legal department staffed by more than 30 attorneys responsible for oversight of all agency rulemaking, litigation, procurement, contracting, ethics, and other matters. I advise the Director on legislative initiatives and work closely with senior officials in the Office of Management and Budget, White House Counsel's Office, and the Department of Justice on legal issues.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

During my time with the Solicitor's Office in the Department of Labor my clients were the Director, Office of Workers' Compensation Programs, and the Secretary of Labor. The cases arose under the Black Lung Benefits Act, the Fair Labor Standards Act, the Occupational Safety and Health Act, the Labor Management Reporting and Disclosure Act, and other laws enforced or administered by the Department of Labor.

When I was with the State and Local Legal Center my clients were state and local governments and nonprofit organizations representing their interests, including the National Governors' Association, the National Conference of State Legislatures, the National Association of Counties, the National League of Cities, and the National Association of Attorneys General. I specialized in areas related to federalism and the protection of state prerogatives in relation to the federal government.

As an attorney for the National Treasury Employees Union, my client was the Union. We also occasionally provided representation to individual employees. I specialized in issues of constitutional law (specifically the First Amendment, the Fourth Amendment, and the separation of powers doctrine), as well as matters arising under the federal sector labor statutes, the civil rights acts, the Fair Labor Standards Act, the civil service laws, and the Administrative Procedure Act.

My clients at Bernabei and Katz were primarily private sector employees; occasionally I provided representation to public sector employees. The areas of law in which I specialized were whistleblower protection, race and sex discrimination (including sexual harassment), wrongful discharge, the Family Medical Leave Act, and other employment-related subject areas.

As the Office of Special Counsel, we considered our "client" to be the merit based civil service. In this position, I specialized in whistleblower protection, Hatch Act enforcement, and federal civil service law.

My clients at the Office of Personnel Management are the Director of OPM, and OPM's senior managers. In addition, because of our government-wide role in the field of personnel law, I provide advice to officials across the executive branch on matters related to civilian pay, benefits, civil service protections, and other matters within the jurisdiction of OPM.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

The majority of my practice over my legal career has been in litigation. During my years with the Department of Labor and the National Treasury Employees Union (which comprise the majority of my legal career) I was in court (or participating in an administrative hearing) on a regular basis.

- i. Indicate the percentage of your practice in:
1. federal courts: 85%
  2. state courts of record: 0%

- 3. other courts: 0%
- 4. administrative agencies: 15%

ii. Indicate the percentage of your practice in:

- 1. civil proceedings: 100%
- 2. criminal proceedings: 0%

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

When I was employed by the Office of the Solicitor at the U.S. Department of Labor I tried dozens of cases arising under the Black Lung Benefits Act before administrative law judges. I do not have an exact number and I do not believe that these cases are publicly reported, but I was travelling at least several days each month in 1980 and 1981 to represent the Department of Labor at hearings in locations around the country where the coal miners lived. Usually, the hearings were several hours in duration; in some instances I cross-examined expert medical witnesses who testified on behalf of coal operators contesting miners' entitlement to benefits. In the majority of instances the witnesses would consist of miners and other lay witnesses. I was usually sole counsel at the hearings; on occasion I was co-counsel.

During my employment with NTEU, all of the cases in federal district court (or the Court of Federal Claims) in which I participated and which were tried to final decision were resolved on motions to dismiss or for summary judgment. Based on a Westlaw search, I would estimate that I either prepared or supervised the preparation of the briefs in 15-20 cases in federal district court that were resolved on motions. I personally argued the majority of these motions.

i. What percentage of these trials were:

- 1. jury: 0%
- 2. non-jury: 100%

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

The cases or matters in which I have either drafted all or part of a brief or supervised its drafting are listed below. Please note that there may be additional briefs that I drafted or whose drafting I supervised, which I have been unable to identify or locate. In particular, I participated in the preparation of additional petitions for certiorari and oppositions to such petitions between 1981 and 1983, when I was with the Department of Labor. In response to my request, the

Solicitor's Office at DOL undertook a search, but its records are not complete and it was unable to locate any additional briefs. I believe that I may also have participated in the drafting of some petitions for certiorari while at the National Treasury Employees Union but I have been unable to identify or locate those briefs. I have never argued a case before the Court.

Office of Personnel Management:

*Elgin v. U.S. Department of the Treasury*, 132 S. Ct. 2126 (2012). Brief for respondents, available at 2012 WL 135052. (My name appears on this brief, although I did not draft or supervise its drafting. The brief was drafted by the Solicitor General's office—my staff supplied edits and I participated in the moot court.)

National Treasury Employees Union (1984 – 1998; 2004 – 2009):

*Gomez-Perez v. Potter*, 553 U.S. 474 (2008). Brief for the National Treasury Employees Union as *amicus curiae* supporting petitioner, available at 2007 WL 4141903.

*Garcetti v. Ceballos*, 547 U.S. 410 (2006). Brief for the National Treasury Employees Union as *amicus curiae* supporting respondent, available at 2005 WL 1749167.

*Whitman v. U.S. Department of Transportation*, 547 U.S. 512 (2006). Brief for the National Treasury Employees Union as *amicus curiae* supporting petitioner, available at 2005 WL 2138281.

*National Federation of Federal Employees, Local 1309 v. U.S. Department of the Interior*, 526 U.S. 86 (1999). Petition for a writ of certiorari, reply brief in support of petition for certiorari, brief for petitioner, and reply brief for petitioner National Federation of Federal Employees, available at 1998 WL 34081041, 1998 WL 34081022, 1998 WL 419391, and 1998 WL 734427.

*Gilbert v. Homar*, 520 U.S. 924 (1997). Brief for the National Treasury Employees Union as *amicus curiae* in support of respondent, available at 1997 WL 88001.

*United States v. National Treasury Employees Union*, 513 U.S. 454 (1995). Brief in opposition and brief for respondents National Treasury Employees Union, et al., available at 1994 WL 16100284, 1994 WL 396914.

*United States Department of Defense v. Federal Labor Relations Authority*, 510 U.S. 487 (1994). Brief for the National Treasury Employees Union as *amicus curiae* in support of respondents supplied.

*Parker v. King*, 505 U.S. 1229 (1992) (cert. denied). Petitioner's reply brief supplied. I have been unable to locate a copy of the petition for certiorari.

*Irwin v. Department of Veterans Affairs*, 498 U.S. 89 (1990). Brief for the National Treasury Employees Union as *amicus curiae* supporting petitioner, available at 1990 WL 10013118.

*Department of the Treasury, IRS v. Federal Labor Relations Authority*, 494 U.S. 922 (1990). Brief for respondent National Treasury Employees Union, available at 1989 WL 1127442.

*National Treasury Employees Union v. Von Raab*, 489 U.S. 656 (1989). Petition for writ of certiorari, reply brief in support of petition for writ of certiorari, petitioners' supplemental brief in support of writ of certiorari, brief for the petitioners, and reply brief for the petitioners, available at 1987 WL 9555325, 1987 WL 880086, 1987 WL 880087, 1988 WL 1025626, and 1988 WL 1025649.

*Carter v. Goldberg*, 498 U.S. 811 (1990) (cert. denied). Petition for writ of certiorari and reply brief in support of writ of certiorari supplied.

*Karahalios v. National Federation of Federal Employees*, 489 U.S. 527 (1989). Brief for the National Treasury Employees Union as *amicus curiae* supporting respondents, available at 1988 WL 1025799.

*National Treasury Employees Union v. U.S. Department of the Treasury*, 493 U.S. 1055 (1990) (cert. denied). Petition for writ of certiorari and reply brief in support of writ of certiorari supplied.

*Bowsher v. Synar*, 478 U.S. 714 (1986). Brief for appellee National Treasury Employees Union, available at 1986 WL 728079.

*EEOC v. FLRA*, 476 U.S. 19 (1986). Brief for the National Treasury Employees Union as *amicus curiae* supporting respondents, available at 1985 WL 669146.

*Peterson v. Merit Systems Protection Board*, 469 U.S. 1189 (1985) (cert. denied). Reply brief in support of certiorari supplied. I have been unable to locate a copy of the petition for certiorari.

On behalf of state and local government interests (1984):

*Estate of Thornton v. Caldor*, 472 U.S. 703 (1985). Brief of the Council of State Governments, the National Association of Counties and the National Conference of State Legislatures as *amici curiae* supporting petitioner, available at 1984 WL 566050.

*Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985). Supplemental Brief of the National League of Cities, the National Governors' Association, the National Association of Counties, the National Conference of State Legislatures, the Council of State Governments, the International City Management Association, and the United States Conference of Mayors as *amici curiae* supporting appellees, available at 1984 WL 563997.

*United States v. 50 Acres of Land*, 469 U.S. 24 (1984). Brief for the Council of State Governments, the National Governors' Association, the National League of Cities, the United States Conference of Mayors, the National Association of Counties and the International City Management Association as *amici curiae* supporting respondent, available at 1984 WL 565865.

*Roberts v. U.S. Jaycees*, 468 U.S. 609 (1984). I have been unable to obtain a copy of the *amicus* brief.

*Armco v. Hardesty*, 467 U.S. 638 (1984). I have been unable to obtain a copy of the *amicus* brief.

On behalf of the Department of Labor (1981 – 1983):

*E-Systems, Inc. v. OWCP*, 464 U.S. 956 (1983) (cert. denied). Brief in opposition supplied.

*Helen Mining Co. v. Donovan*, 459 U.S. 927 (1982) (cert. denied). Brief in opposition supplied.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. Gingery v. Department of Defense, 550 F.3d 1347 (Fed. Cir. 2008)

NTEU filed an *amicus* brief in this case which involved a challenge brought by a disabled veteran to OPM regulations that permitted agencies to pass over disabled veterans

seeking positions in the “excepted” civil service without securing OPM’s permission to do so. The veteran also challenged the legality of the government-wide Federal Career Intern Program.

I drafted NTEU’s amicus brief and, with the Court’s permission, presented oral argument in the case on the side of the veteran. The court of appeals (Judges Newman, Prost, and Moore) agreed with NTEU’s position and held the OPM regulation unlawful. The decision ensures that significant procedural protections be provided to disabled veterans who are passed over for federal jobs.

Petitioner was represented by Andrew J. Dhuey, 456 Boynton Avenue, Berkeley, CA 94707, (510-528-8200). Opposing counsel from the Justice Department included Hillary Stern, Todd Hughes, and Jeanne Davidson, 1101 L Street, NW, Washington, DC 20530, (202) 616-8277. My co-counsel were Gregory O’Duden and Timothy Hannapel, NTEU, 1750 H Street, NW, Washington, DC 20006, (202) 572-5500.

2. National Treasury Employees Union v. Chertoff, 452 F.3d 839 (D.C. Cir. 2006)

This was a challenge brought by the National Treasury Employees Union to regulations promulgated jointly by OPM and the Department of Homeland Security under the Homeland Security Act of 2002, which, among other things, limited the rights of DHS employees to bargain collectively over conditions of employment and allowed DHS to abrogate existing agreements unilaterally. NTEU led a coalition of federal sector unions in challenging these far reaching regulations.

In the district court, Judge Rosemary Collyer ruled in favor of the Union in part, but rejected its challenge to the regulations’ narrowing of the collective bargaining obligation. On appeal, the Court of Appeals for the D.C. Circuit (Judges Edwards, Randolph and Griffith) reversed the district court in part and held that the regulations were unlawful because they failed to ensure collective bargaining rights as required by the statute. The case – which received significant public attention at the time – resolved important and novel issues of federal sector labor law arising out of the creation of the new Department of Homeland Security.

I was responsible for the supervision of the briefing of this case at all stages, and supervised the presentation of oral argument by a more junior attorney before the district court. I assisted the General Counsel in preparing for and presenting argument in the court of appeals.

Opposing counsel included the following attorneys from the Department of Justice: Thomas Bondy (now Deputy General Counsel with the FBI, 935 Pennsylvania Avenue, NW, Washington, DC 20535, (202) 220-9320); William Kanter (now retired), and Susan Rudy (U.S. Department of Justice, Civil Division, Federal Programs Branch, 20 Massachusetts Avenue, NW, Room 6100, Washington, DC 20001, (202) 514-2071). My co-counsel on the case were Robert Shriver and Gregory O’Duden, both then of



NTEU, 1750 H Street, NW, Washington, DC 20006, (202) 572-5500. Robert Shriver now works at OPM, 1900 E Street, NW, Washington, DC 20415, (202) 606-2044.

3. National Treasury Employees Union v. FLRA, 139 F.3d 214 (D.C. Cir. 1998); related cases: NTEU v. King, 798 F. Supp. 780 (D.D.C. 1992); National Treasury Employees Union v. FLRA, 961 F.2d 240 (D.C. Cir. 1992); National Treasury Employees Union v. FLRA, 986 F.2d 537 (D.C. Cir. 1993); SSA & NTEU, 45 FLRA 303 (1992); SSA & NTEU, 52 FLRA No. 114 (1997); SSA & NTEU, 55 FLRA 964 (1999).

The issues in these cases concerned the extent to which a rival labor union is entitled (under the First Amendment and/or the Federal Service Labor Management Relations Statute, 5 U.S.C. § 7101, *et seq.*) to leaflet in public areas of an agency's premises when another union represents the employees. The matter arose in the context of a lawsuit that NTEU brought under the First Amendment in the United States district court, and an unfair labor practice that the Union filed against the agency (the Social Security Administration) before the Federal Labor Relations Authority. It raised important and novel questions involving the intersection of federal labor law and the First Amendment and was before the D.C. Circuit several times.

I had primary responsibility for all of these cases. I briefed them and presented oral argument twice in the district court (before Judge Joyce Hens Green) and three times before the D.C. Circuit (Judges Wald, Sentelle and Henderson in 961 F.2d 240; Judges Wald, Silberman, and D. H. Ginsburg in 986 F.2d 537 and 139 F.3d 214). I also presented oral argument before the FLRA in the case (this matter is one of only a few that have ever been orally argued before the FLRA in its 32 years of existence).

The district court granted NTEU's request for a preliminary injunction, finding that the Union's First Amendment rights were violated. After the court of appeals' decision remanding the FLRA's initially unfavorable ruling on the labor issue, the FLRA ruled in NTEU's favor, finding that it was entitled under the labor statute to leaflet in the public areas. As a result, the preliminary injunction that Judge Green ordered in favor of the Union was ultimately vacated as moot.

Opposing counsel in the cases were R. Craig Lawrence and Daniel Standish, Office of the U.S. Attorney, 555 Fourth Street, NW, Washington, DC 20530, (202) 307-0406; James Blandford and William Tobey, Federal Labor Relations Authority, 1400 K Street, NW, Washington, DC 20424, (202) 218-7770; Mark Roth, Alexia McCaskill, Judith Galat, American Federation of Government Employees, 80 F Street, NW, Washington, DC 20001, (202) 639-6424. My co-counsel was Gregory O'Duden, NTEU, 1750 H Street, NW, Washington, DC 20006, (202) 572-5500.

4. National Treasury Employees Union v. King, 132 F.3d 736 (Fed. Cir. 1998)

This case was a class action for monetary and injunctive relief brought on behalf of tens of thousands of federal employees who were paid "special rates" as a result of their hard

to fill occupations. Between 1982 and 1989, a regulation issued by OPM had denied these employees the salary increases they had received in previous years. NTEU successfully challenged the regulation as unlawful and secured a decision from the Court of Appeals for the Federal Circuit in this appeal (Judges Newman, Archer, and Bryson) directing an award of backpay based on the regulatory formula in effect prior to the issuance of the illegal regulation. As a result of this decision, the case was ultimately settled after I left NTEU for in excess of \$180 million.

I represented NTEU in this matter for some nine years, beginning in 1989. I briefed the issues before the district court and appeared before the United States District Court for the District of Columbia (Judge John Garrett Penn) on several occasions to argue portions of the case. I also briefed and argued the case in the court of appeals.

Opposing counsel in this case was John Tyler, United States Department of Justice, Civil Division, Federal Programs Branch, 950 Pennsylvania Avenue, NW, Washington, DC 20530, (202) 305-0198). My co-counsel in the case was Gregory O'Duden, NTEU General Counsel, 1750 H Street, NW, Washington, DC 20006, (202) 572-5500.

5. Weaver v. U.S. Information Agency, 87 F.3d 1429 (D.C. Cir. 1996)

This case arose out of a lawsuit filed by an employee of the U.S. Information Agency who sought to challenge a regulation that required her to submit all writings for pre-publication review, on penalty of discipline. NTEU filed an amicus brief on the side of the employee on the issue of whether her constitutional challenge should be dismissed for failure to exhaust administrative remedies.

I drafted NTEU's amicus brief and, with leave of the court, I presented oral argument on behalf of NTEU as amicus. The court of appeals (Judges Wald, Silberman, and Williams) agreed with NTEU and held that the employee was not required to exhaust administrative remedies to bring a facial challenge to the regulation on constitutional grounds. The case established an important principle of law that ensured that federal employees could mount pre-enforcement constitutional challenges to regulations restricting speech.

Opposing counsel on appeal was Craig Lawrence of the U.S. Attorney's Office for the District of Columbia, 555 Fourth Street, NW, Washington, DC 20530, (202) 307-0406. Counsel for the appellant, Ms. Weaver, was Steven M. Kohn, Kohn, Kohn, and Colapinto, 3233 P Street, NW, Washington, DC 20007, (202) 342-6980. My co-counsel in the case were Gregory O'Duden and Barbara Atkin, of NTEU, 1750 H Street, NW, Washington, DC 20006, (202) 572-5500.

6. Saraco v. United States, 831 F. Supp. 1154 (E.D. Pa. 1993), *aff'd*, 61 F.3d 863 (Fed. Cir. 1995)

This case raised an important and recurring jurisdictional issue: whether the Court of Federal Claims had exclusive jurisdiction over cases brought by federal employees under the Fair Labor Standards Act where the amount in controversy exceeded \$10,000.

NTEU represented a class of over 800 employees of the United States Customs Service who claimed that they had been unlawfully exempted from the Fair Labor Standards Act. The lawsuit was brought in the United States District Court for the Eastern District of Pennsylvania (Judge Jan DuBois). I supervised the briefing of the case before the district court on the government's motion to dismiss. The court dismissed the case and transferred it to the Court of Federal Claims. I briefed and orally argued the case on appeal. The Court of Appeals for the Federal Circuit (Judges Newman, Archer and Michel) affirmed, establishing the exclusive Tucker Act jurisdiction of the Court of Federal Claims in these cases.

Opposing counsel was Shalom Brilliant, Department of Justice, Commercial Litigation Branch, 1101 L Street, NW, Washington, DC 20530, (202) 514-2217. My co-counsel were David Klein and Gregory O'Duden of NTEU, 1750 H Street, NW, Washington, DC 20006, (202) 572-5500. David Klein is now a partner at the Orrick Law Firm, 1152 15th Street, NW, Washington, DC 20005, (202) 339-8629.

7. United States v. National Treasury Employees Union, 788 F. Supp. 4 (D.D.C. 1992), *aff'd*, 990 F.2d 1271 (D.C. Cir. 1993), *aff'd*, 513 U.S. 454 (1995)

This case, which was brought as a class action on behalf of all executive branch employees below grade GS-16, involved a constitutional challenge to a portion of the Ethics Reform Act of 1989 which prohibited federal employees from receiving any compensation for making speeches or writing articles during their off-duty time, even when the speeches and articles had nothing to do with their official duties. NTEU, which was certified as the class representative, secured a decision from the district court (Judge Thomas Penfield Jackson) holding that this prohibition violated the First Amendment. Judge Jackson's decision was affirmed on appeal by the D.C. Circuit (Judges Williams, Randolph, and Sentelle). A petition for rehearing was denied. Thereafter, the United States Supreme Court granted the government's petition for certiorari and upheld the court of appeals' decision that the "honoraria ban" was unconstitutional.

I was involved in all aspects of the briefing of this case from the district court to the Supreme Court. I either drafted or participated in the supervision of the drafting of all of NTEU's briefs. I also assisted NTEU's General Counsel in preparing for the oral arguments in the case and in devising NTEU's legal strategy.

Opposing counsel in the case included Michael Dreeben, Office of the Solicitor General; Alfred Mollin and Michael Singer, U.S. Department of Justice, Civil Division, Appellate Section, 950 Pennsylvania Avenue, NW, Washington, DC 20530, (202) 514-5432; and

Jeffrey Gutman and Susan Rudy, U.S. Department of Justice, Civil Division, Federal Programs Branch, 20 Massachusetts Avenue, NW, Washington, DC 20001, (202) 514-2071). Co-counsel in the case were Gregory O'Duden and Barbara Atkin, NTEU, 1750 H Street, NW, Washington, DC 20006, (202) 572-5500.

8. National Treasury Employees Union v. U.S. Customs Service, 829 F. Supp. 408 (D.D.C. 1993), *aff'd*, 27 F.3d 623 (D.C. Cir. 1994)

NTEU challenged the constitutionality of an expanded program of random urinalysis testing of Customs employees who had access to certain sensitive but unclassified databases. The issue in the case was whether such information was "truly sensitive" within the meaning of the Supreme Court's decision in NTEU v. Von Raab, in which I also participated (see below).

The district court (Judge Thomas Penfield Jackson) entered summary judgment against the Union. On appeal, in a 2-1 decision (Judges Wald, Buckley, and Williams) affirmed the district court's decision. I supervised the briefing and argument of the case in the district court. On appeal, I wrote the brief and argued the case. The court's opinion in this case established new parameters for the government's authority to conduct drug tests based on public employees' access to sensitive information.

Opposing counsel in the case were Peter Robbins and Robert Zener of the Department of Justice. (Mr. Zener has retired; Mr. Robbins is no longer at the Department of Justice). My co-counsel were David Klein and Gregory O'Duden of NTEU, 1750 H Street, NW, Washington, DC 20006, (202) 572-5500. David Klein is now a partner at the Orrick Law Firm, 1152 15th Street, NW, Washington, DC 20005, (202) 339-8629.

9. Department of the Treasury, IRS v. FLRA, 494 U.S. 922 (1990)

This case involved the issue of whether challenges to violations of OMB Circular A-76 (governing the contracting out of federal positions) could be pursued under the negotiated grievance arbitration procedure or whether allowing such grievances would violate management rights.

NTEU prevailed before the Federal Labor Relations Authority and the D.C. Circuit. The Supreme Court, however, reversed in a 6-3 ruling. I drafted the brief for NTEU as intervener in the Supreme Court, and assisted the General Counsel in preparing for the oral argument. The case resolved important questions of federal sector labor law regarding the permissible scope of the negotiated grievance-arbitration procedures and the rights of federal employees to challenge decisions to contract out their jobs.

Opposing counsel in the case included Harriet Shapiro, Thomas Bondy (now Deputy General Counsel with the FBI, 935 Pennsylvania Avenue, NW, Washington, DC 20535, (202) 220-9320) and William Kanter of the Department of Justice (retired). Counsel for the FLRA was Robert J. Englehart, now with the National Labor Relations Board, 1099 14th Street, NW, Washington, DC 20570, (202) 273-2978.

10. National Treasury Employees Union v. Von Raab, 649 F. Supp. 380 (E.D. La. 1986), *rev'd*, 816 F.2d 170 (5th Cir. 1987), *aff'd*, 489 U.S. 656 (1989)

This was a lawsuit brought by NTEU challenging the constitutionality of a program implemented by the U.S. Customs Service requiring employees to submit to drug tests as a condition of promotion into certain positions. At the time that the lawsuit was brought, the Fourth Amendment law governing such programs had just started to develop.

The district court (Judge Robert Collins) ruled that the program violated several provisions of the Constitution, including the Fourth Amendment, and issued an injunction against its implementation. On appeal, the Fifth Circuit reversed in a 2-1 decision (Judges Rubin, Hill and Edwards). The Supreme Court granted NTEU's petition for certiorari and, in a 5-4 decision, affirmed the Fifth Circuit's ruling. I briefed this case at every stage, up to the Supreme Court, and assisted NTEU's then Director of Litigation, Lois Williams, in preparing for oral arguments. The Supreme Court's decision in this case established the standards that have since been applied to determine the Fourth Amendment rights of public employees in this and other contexts.

Opposing counsel in the case included Richard Willard, Steptoe and Johnson, 1330 Connecticut Avenue, NW, Washington, DC 20036, (202) 429-6263, and Robert Chesnut, Chegg, Inc., 4655 Old Ironsides Road, Suite 130, Santa Clara, CA, 95054, (888) 992-4344. My co-counsel in the case was Lois G. Williams, 874 Douglass Street, San Francisco, CA 94114, (202) 558-8699.

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

My work at the Department of Labor and for the National Treasury Employees Union almost exclusively involved litigating cases in the federal courts or before administrative tribunals. At the State and Local Legal Center I worked almost exclusively on the preparation of amicus briefs for state and local government organizations in the Supreme Court.

At the National Treasury Employees Union I occasionally worked with our legislative department reviewing proposed legislation for purposes of crafting the Union's position or analyzing its legal implications. I did not engage in any "lobbying" activities on behalf of the Union except on a handful of occasions in the 1980s, when I accompanied union members on visits to their Congressional representatives in connection with the Union's annual legislative conference. I have not otherwise engaged in any lobbying activities on behalf of any private interests.

In my position as Special Counsel, I was routinely required to make legal judgments regarding matters within the agency's jurisdiction that did not directly involve litigation. These would include: determining whether and to what extent certain types of activities were or should be considered prohibited by the Hatch Act; overseeing the referral and investigation of certain whistleblower disclosures pursuant to 5 U.S.C. § 1213; and interpreting the civil service laws and the statutes prohibiting whistleblower retaliation and other "prohibited personnel practices" for purposes of deciding which complaints should be investigated and prosecuted. OSC was also asked on occasion for its views on pending legislation. As Special Counsel, I had final responsibility for all of these matters.

While at Bernabei and Katz, I counseled and advised clients regarding their rights at the workplace, predominantly in the private sector. I secured significant settlements for several of my clients without resort to litigation, including but not limited to securing monetary relief for a whistleblower whose disclosures regarding the violations of established accounting principles by a major corporation were ultimately substantiated; securing a monetary settlement for a female executive who had suffered retaliation and sexual harassment at the company at which she held a senior position, and securing a favorable settlement for a physician who claimed that she suffered retaliation for complaining about lax procedures at a medical facility.

In my current position as General Counsel for OPM, I provide legal and policy advice to the Director of the agency and officials across the Executive Branch regarding all aspects of federal personnel management and all other matters within the jurisdiction of OPM. I am OPM's Designated Agency Ethics Officer. The Office of General Counsel reviews all aspects of agency rulemaking, and advises the Director and other components of OPM on procurement, contracting, ethics, and other matters. I advise the Director on proposed legislative initiatives. I am also responsible for interpreting and assisting the implementation of recently enacted legislation, such as the Affordable Care Act, which directly affects OPM's administration of the Federal Employee Health Benefits Program, and which has imposed new responsibilities upon OPM with respect to the establishment of multi-state insurance plans that will be made available to the general public. I also work closely with senior officials in the Office of Management and Budget, White House Counsel's Office, and United States Department of Justice on legal issues including but not limited to the preparation and implementation of Executive Orders and Presidential memoranda. In addition, I consult with the Department of Justice on significant matters in litigation in which OPM is named as a defendant or otherwise has an interest.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

Member, Adjunct Faculty  
2004-2011

From July 2004 to May 2009, and again in June and July 2011, I taught “Legal Issues in Public Administration” for the American University Masters in Public Administration Program. The purpose of the course was primarily to introduce the students, who were predominantly government executives, to the legal principles that govern public policy administration and to teach them about the role of the courts in our Constitutional system. Spring 2007, Fall 2008, Spring 2009, and Summer 2011 syllabi supplied.

In July 2006 and 2007, I taught “Legal Basis of Public Administration” for the American University Masters in Public Administration Program. The purpose of the course was primarily to introduce the students, who were predominantly government executives, to the legal principles that govern public policy administration and to teach them about the role of the courts in our Constitutional system. No syllabus available, but the syllabi were similar if not identical to those used for the “Legal Issues in Public Administration” courses.

In Spring 2006, I taught “Independent Study: Legal Issues for Executives” for the American University Masters in Public Administration Program. No syllabus available.

From October to December 2007, I taught “Legal Issues in Public Administration” for the USDA Certificate Program at American University. The purpose of the course was primarily to introduce the students, who were predominantly government executives, to the legal principles that govern public policy administration and to teach them about the role of the courts in our Constitutional system. October 2007 syllabus supplied.

From January 2008 to May 2009, I taught “Office of Inspector General – Legal Issues in Public Administration: Leading in the Context of Constitutional Government” for the Key Executive Leadership Certificate Program at American University. The purpose of the course was primarily to introduce the students, who were predominantly government executives and supervisors working for federal inspectors general, to the legal principles that govern public policy administration and the work of inspectors general, and to teach them about the role of the courts in our Constitutional system. April 2008, May 2008, October 2008, and February 2009 syllabi provided.

In January 2009, I taught “Open Enrollment – Legal Issues in Public Administration” for the Key Executive Leadership Certificate Program at American University. The purpose of the course was primarily to introduce the students, who were predominantly government executives, to the legal principles that govern public policy administration and to teach them about the role of the courts in our Constitutional system. No syllabus available.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business

relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I do not have any anticipated receipt of any deferred income or benefits from any source, including those identified in this question.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

If I am confirmed to the United States Court of Federal Claims, it is possible that cases or specific matters on which I worked involving federal employment issues (either at OPM or the National Treasury Employees Union) could come before the Court. If this were to occur I would recuse myself from such cases. I do not anticipate any other situations that would present potential conflicts of interests, but should such arise I would conduct myself in accordance with the relevant standards of judicial conduct, including the Code of Conduct for United States Judges.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.



If confirmed, I will conduct myself in a manner that will avoid situations in which my impartiality might be questioned. I will recuse myself from sitting on any cases in which any personal, financial or fiduciary matter might cause others to question my impartiality. In any case where I have a question about whether a conflict, real or apparent, exists, I will consult with my colleagues, with counsel for the Court, and/or with the Committee on Codes of Conduct of the Administrative Office of the U.S. Courts.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I volunteered with Legal Counsel for the Elderly during the 1980s. I can recall three matters on which I worked. In one case I represented an elderly woman who was wheelchair bound and who owned a house in which certain individuals were essentially squatting. I secured a notice of eviction on her behalf and arranged for the eviction to take place. I probably spent 30-40 hours on her case and possibly more. I also represented an elderly man who had been denied veterans benefits. I probably spent 20 hours on his case. I represented him before the Veterans Administration and my recollection is that the denial of benefits was reversed. In addition, I represented a widow who was seeking to collect death benefits under the Black Lung Benefits Act; my recollection is that I represented her in a hearing in Washington D.C., but I cannot remember the other details or the amount of time that I spent on her case.

Most of my career has either been in government service or as an attorney for a federal sector labor organization which provides legal representation to its members free of charge. Some of my government service as an attorney at the Department of Labor was in service of the disadvantaged. In addition to representing the Department in appeals of cases that involved violations of wage and hour laws, for the first two years of my work at DOL, I routinely represented the Department in hearings to advocate on behalf of coal miners who suffered from black lung disease when coal operators challenged their receipt of benefits under the Black Lung Benefits Act.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In 2011, I was considered for a federal judgeship, but another candidate was ultimately nominated. With respect to the U.S. Court of Federal Claims, in early January 2013, an official from the White House Counsel's Office discussed the upcoming vacancies with me and my possible interest. Since January 6, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On March 5, 2013, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On March 19, 2013, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10  
Rev. 1/2012

**FINANCIAL DISCLOSURE REPORT  
NOMINATION FILING**

*Report Required by the Ethics  
in Government Act of 1978  
(5 U.S.C. app. §§ 101-111)*

<b>1. Person Reporting (last name, first, middle initial)</b> Kaplan, Elaine D.	<b>2. Court or Organization</b> United States Court of Federal Claims	<b>3. Date of Report</b> 03/19/2013
<b>4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time)</b> Judge	<b>5a. Report Type (check appropriate type)</b> <input checked="" type="checkbox"/> Nomination      Date 03/19/2013 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final <b>5b.</b> <input type="checkbox"/> Amended Report	<b>6. Reporting Period</b> 01/01/2012 to 03/01/2013
<b>7. Chambers or Office Address</b> Office of Personnel Management Office of General Counsel 1900 E Street NW Washington, D.C. 20006		
<b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the <b>NONE</b> box for each part where you have no reportable information. Insert signature on last page.		

**I. POSITIONS.** *(Reporting individual only; see pp. 9-13 of filing instructions.)*

☒ **NONE** *(No reportable positions.)*

POSITION

NAME OF ORGANIZATION/ENTITY

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

**II. AGREEMENTS.** *(Reporting individual only; see pp. 14-16 of filing instructions.)*

☐ **NONE** *(No reportable agreements.)*

DATE

PARTIES AND TERMS

1. 2009 401(k) Plan (Vanguard Mutual Funds) with former employer, NTEU. Neither I nor NTEU contribute to the plan any longer. I have no control over the plan.
2. \_\_\_\_\_
3. \_\_\_\_\_

**FINANCIAL DISCLOSURE REPORT**  
 Page 2 of 6

Name of Person Reporting	Date of Report
Kaplan, Elaine D.	03/19/2013

**III. NON-INVESTMENT INCOME.** *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*
**A. Filer's Non-Investment Income**
☒ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE	INCOME <i>(yours, not spouse's)</i>
1.		
2.		
3.		
4.		

**B. Spouse's Non-Investment Income** *- If you were married during any portion of the reporting year, complete this section.  
(Dollar amount not required except for honoraria.)*
☒ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE
1.	
2.	
3.	
4.	

**IV. REIMBURSEMENTS** *- transportation, lodging, food, entertainment.  
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)*
☐ NONE *(No reportable reimbursements.)*

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1. EXEMPT				
2.				
3.				
4.				
5.				

**FINANCIAL DISCLOSURE REPORT**  
 Page 3 of 6

<b>Name of Person Reporting</b>	<b>Date of Report</b>
Kaplan, Elaine D.	03/19/2013

**V. GIFTS.** *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*
☐ NONE *(No reportable gifts.)*

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.	Exempt		
2.			
3.			
4.			
5.			

**VI. LIABILITIES.** *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*
☒ NONE *(No reportable liabilities.)*

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.			
2.			
3.			
4.			
5.			

**FINANCIAL DISCLOSURE REPORT**  
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<b>Name of Person Reporting</b>	<b>Date of Report</b>
Kaplan, Elaine D.	03/19/2013

**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-69 of filing instructions.)

☐ **NONE** (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Schwab Value Advantage Money Fund	A	Dividend	J	T					
2. Wells Fargo Bank (checking account)		None	J	T					
3. Schwab Target 2020 Fund	A	Int./Div.	J	T					
4. Vanguard Target Retirement 2020 Fund	D	Dividend	N	T					
5. Vanguard Prime Money Market Fund	A	Interest	J	T					
6. Genworth Life Insurance (Universal Life)	A	Interest	J	T					
7.									
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

**1. Income Gain Codes:**

(See Columns B) and D4)

**2. Value Codes:**

(See Columns C1 and D3)

**3. Value Method Codes:**

(See Column C2)

A = \$1,000 or less

F = \$50,001 - \$100,000

J = \$15,000 or less

N = \$250,001 - \$500,000

P3 = \$25,000,001 - \$50,000,000

Q = Appraisal

L = Book Value

B = \$1,001 - \$2,500

G = \$100,001 - \$1,000,000

K = \$15,001 - \$50,000

O = \$500,001 - \$1,000,000

R = Cost (Real Estate Only)

V = Other

C = \$2,501 - \$5,000

H1 = \$1,000,001 - \$5,000,000

L = \$50,001 - \$100,000

P1 = \$1,000,001 - \$5,000,000

P4 = More than \$50,000,000

S = Assessment

W = Estimated

D = \$5,001 - \$15,000

H2 = More than \$5,000,000

M = \$100,001 - \$250,000

P2 = \$5,000,001 - \$25,000,000

T = Cash Market

E = \$15,001 - \$50,000

**FINANCIAL DISCLOSURE REPORT**  
Page 5 of 6

Name of Person Reporting	Date of Report
Kaplan, Elaine D.	03/19/2013

**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.** *(Indicate part of report.)*

**FINANCIAL DISCLOSURE REPORT**  
Page 6 of 6

Name of Person Reporting	Date of Report
Kaplan, Elaine D.	03/19/2013

**IX. CERTIFICATION.**

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: s/ **Elaine D. Kaplan**

**NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)**

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
Suite 2-301  
One Columbus Circle, N.E.  
Washington, D.C. 20544



## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		30	519	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		501	761	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		1	823
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		338	985
Real estate owned – see schedule		885	070	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		12	000				
Cash value-life insurance		11	885				
Other assets itemize:							
Thrift Savings Plan		207	133				
				Total liabilities		340	808
				Net Worth		1	307 560
Total Assets		1 648	368	Total liabilities and net worth		1 648	368
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

**FINANCIAL STATEMENT****NET WORTH SCHEDULES**Listed Securities

Invesco Balanced-Risk Commodity Strategy Fund	\$ 638
Schwab Target 2020 Fund	2,126
Valic 7-Year Set Rate Annuity	31,778
Valic Blue Chip Growth Fund	391
Valic Dividend Value	129
Valic Emerging Economies Fund	1,043
Valic Foreign Value Fund	642
Valic Global Real Estate Fund	653
Valic International Equities Fund	1,165
Valic International Opportunities Fund	1,166
Valic Large Cap Core Fund	130
Valic Large Cap Value Fund	130
Valic Mid Cap Growth Fund	260
Valic Mid Cap Index Fund	1,547
Valic Mid Cap Value Fund	776
Valic Small Cap Index Fund	391
Valic Small Cap Value Fund	650
Valic Socially Responsible Fund	1,428
Valic Stock Index Fund	1,297
Vanguard Target Retirement 2020 Fund	449,640
Vanguard Prime Money Market Fund	5,262
Vanguard Windsor II Fund	519
Total Listed Securities	<u>\$ 501,761</u>

Real Estate Owned

Personal residence	\$ 840,720
Undeveloped lot	<u>44,350</u>
Total Real Estate Owned	<u>\$ 885,070</u>

AFFIDAVIT

I, ELAINE KAPLAN, do swear  
that the information provided in this statement is, to the best  
of my knowledge, true and accurate.

3/21/2013

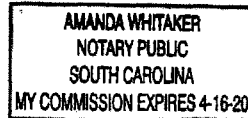
(DATE)

EL Kaplan

(NAME)

Amanda Whitaker

(NOTARY)



Senator FRANKEN. I am sorry if I asked for—maybe I got my signals crossed here. So we will go to Judge Pryor.

**STATEMENT OF WILLIAM H. PRYOR, JR., NOMINEE TO BE A  
MEMBER OF THE U.S. SENTENCING COMMISSION**

Judge PRYOR. Thank you, Senator.

Senator FRANKEN. Please introduce—

Judge PRYOR. I only have a couple of guests. Two of my former law clerks, Marisa Maleck and Tiffany Barrans; and one of my—

Senator FRANKEN. Would you please stand?

Judge PRYOR. And one of my current law clerks, Jennifer Bandy, who had the task of assisting me in compiling all the answers to the Senate Judiciary Committee's questionnaire. I appreciate them being here today.

I, too, want to thank the President for this nomination, and I appreciate the opportunity of the Committee affording us this hearing and look forward to answering your questions.

[The biographical information of Judge Pryor follows:]

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).  
  
William Holcombe Pryor Jr.  
Bill Pryor
2. **Position:** State the position for which you have been nominated.  
  
Member, United States Sentencing Commission
3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.  
  
United States Court of Appeals for the Eleventh Circuit  
1729 Fifth Avenue North, Suite 900  
Birmingham, Alabama 35203  
  
Residence: Vestavia Hills, Alabama
4. **Birthplace:** State date and place of birth.  
  
1962; Mobile, Alabama
5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.  
  
1984 – 1987, Tulane University School of Law; J.D. (*magna cum laude*), 1987  
  
1980 – 1984, Northeast Louisiana University (now University of Louisiana at Monroe); B.A. (*magna cum laude*), 1984
6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2004 – present  
United States Court of Appeals for the Eleventh Circuit  
1729 Fifth Avenue North, Suite 900  
Birmingham, Alabama 35203  
United States Circuit Judge

2013 – present; 1989 – 1995  
Cumberland School of Law at Samford University  
800 Lakeshore Drive  
Birmingham, Alabama 35229  
Adjunct Professor

2006 – present  
University of Alabama School of Law  
Box 870382  
101 Paul W. Bryant Drive, East  
Tuscaloosa, Alabama 35487  
Distinguished Visiting Professor of Law

1995 – 2004  
State of Alabama  
501 Washington Avenue  
Montgomery, Alabama 36104  
Attorney General (1997 – 2004)  
Deputy Attorney General (1995 – 1997)

1991 – 1995  
Walston, Stabler, Wells, Anderson & Bains (now part of Jones Walker)  
One Federal Place  
1819 Fifth Avenue North, Suite 1100  
Birmingham, Alabama 35203  
Associate Attorney

1988 – 1991  
Cabaniss, Johnston, Gardner, Dumas & O'Neal  
2001 Park Place North, Suite 700  
Birmingham, Alabama 35203  
Associate Attorney

1987 – 1988  
United States Court of Appeals for the Fifth Circuit  
600 Camp Street  
New Orleans, Louisiana 70130  
Law Clerk for the Honorable John Minor Wisdom

Summers 1984, 1985, 1987  
Cabaniss, Johnston, Gardner, Dumas & O'Neal  
2001 Park Place North, Suite 700  
Birmingham, Alabama 35203  
Summer Associate (Summers 1985 & 1987)  
Summer Intern (Summer 1984)

Summers 1986 & 1987  
Liskow & Lewis  
One Shell Square  
701 Poydas Street, Suite 5000  
New Orleans, Louisiana 70139  
Summer Associate

Summer 1986  
Stone, Pigman, Walther, Wittmann & Hutchinson  
546 Carondelet Street  
New Orleans, Louisiana 70130  
Summer Associate

Other Affiliations (uncompensated unless otherwise indicated):

1992 – present  
Tulane Law Review  
Tulane University Law School  
6329 Freret Street  
New Orleans, Louisiana 70118  
Member, Board of Advisory Editors

2011 – present  
Yale Law & Policy Review  
Yale Law School  
127 Wall Street  
New Haven, Connecticut 06511  
Member, Advisory Board

2005 – 2011; 1997 – 2003  
Alabama Center for Law & Civic Education  
Cumberland School of Law  
800 Lakeshore Drive  
Birmingham, Alabama 35229  
Director and Vice President

1997 – 2004  
Washington Legal Foundation  
2009 Massachusetts Avenue, NW

Washington, D.C. 20036  
Member, Legal Policy Advisory Board

1997 – 2004  
Alabama Children First Foundation  
1425 I-85 Parkway, Suite C  
Montgomery, Alabama 36106  
Vice Chairman, Board of Directors

1997 – 2004  
Alabama Chapters of the Federalist Society for Law and Public Policy Studies (now defunct)  
Board of Advisors

2000 – 2004  
Children's Scholarship Fund of Alabama (now defunct)  
Board of Directors

2000 – 2004  
Policy Consensus Initiative  
Portland State University  
720 Urban Center  
506 SW Mill Street  
P.O. Box 1762  
Portland, Oregon 97207  
Board of Directors

1999 – 2000  
Republican Attorneys General Association  
No physical address  
Treasurer

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I registered for selective service upon turning 18.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

**Professional**

National Catholic Educational Association Distinguished Graduate Award, St. Mary's School (2011)



University of Louisiana at Monroe, Hall of Traditions (2010)  
 Honorary Membership, Pi Sigma Alpha (national political science honor society), Eta Nu Chapter, St. Joseph's University (2006)  
 Honorary Doctorate of Laws, John Marshall Law School (2006)  
 Honorary Membership, Phi Alpha Delta Law Fraternity, Atlanta Alumni Chapter (2005)  
 Honorary Doctorate of Laws, Regent University (2004)  
 Joint Resolution of the 108th U.S. Congress, H.R. 389 and S.R. 460, honored the victims of the Sixteenth Street Baptist Church bombing and commended the successful prosecutions of Thomas Blanton and Bobby Frank Cherry (2004)  
 Governor's Award for Distinguished Service to Alabama, Governor Bob Riley, in recognition of service to Governor's Commission on Efficiency, Consolidation, and Funding (2004)  
 McGill-Toolen Catholic High School Hall of Fame (2003)  
 Penelope House Law Enforcement Hall of Fame Inductee for Advocacy Against Domestic Violence (2002)  
 Harlon B. Carter Award, National Rifle Association-Institute for Legislative Action (2001)  
 Friend of the Taxpayer Award, Alabama Citizens for a Sound Economy (2000)  
 Guardian of Religious Freedom Award, Prison Fellowship Ministries, Justice Fellowship, and Neighbors Who Care (1999)  
 Civil Justice Achievement Award, American Tort Reform Association (1999)

Tulane University School of Law

Faculty Honor Scholarship (1984 – 1987)  
 Editor in Chief, *Tulane Law Review*  
 Order of the Coif  
 Rufus C. Harris Award in Torts (Best paper in torts)  
 George Dewey Nelson Memorial Award (highest grade point average in common law curriculum)  
 Best Oralist, Freshman Moot Court Competition

Northeast Louisiana University (now known as University of Louisiana at Monroe)

Band Scholarship (full tuition) (1980 – 1982)  
 Academic Scholarship (1980 – 1984)  
 Debate Scholarship (full tuition) (1983 – 1984)  
 Winton Mizell Pre-Law Scholarship (1983 – 1984)  
 Phi Kappa Phi (junior year)  
 Omicron Delta Kappa  
 Mortar Board  
 President, Phi Eta Sigma (freshman honor society)  
 Treasurer, Phi Alpha Theta (history honor society)  
 Who's Who Among Students in American Universities & Colleges (1983 – 1984)  
 Debate Team, Louisiana State Champion (1984)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Advisory Committee to the Eleventh Circuit Judicial Council on the Future of Judicial Conferences

Vice-Chairman (2007)

Alabama District Attorneys Association (ex officio member)

Alabama State Bar Task Force on Legal Education

Alabama Supreme Court Commission on Dispute Resolution

American Bar Association

American Inns of Court, Hugh Maddox Chapter

Master of the Bench (1998 – 2004)

American Law Institute

Sustaining Member (2000 – present)

Eleventh Circuit Judicial Conference

Planning Committee, Chair (2009)

Eleventh Circuit Judicial Council (2010 – present)

Information Technology Committee, Chair

Personnel Committee

Petition for Review Panel Committee

Security and Preparedness Committee

Space and Facilities Committee

Federalist Society for Law and Public Policy Studies (1984 – present)

Chairman, Federalism & Separation of Powers Practice Group (2001 – 2003)

Judicial Conference of the United States

Judicial Resources Committee (2006 – 2013)

National Association of Attorneys General

Convenor, Federalism Working Group (2000 – 2004)

Member, Executive Working Group on Prosecutorial Relations (2000 – 2004)

Planning Committee, Eleventh Circuit Judicial Conference

Chairman (2009)

*Tulane Law Review*

Board of Advisory Editors (1992 – present)

United States Court of Appeals for the Eleventh Circuit

Electronic Records Committee, Chair

Equal Employment Opportunity Committee, Chair

Information Technology Committee, Chair

Human Resources Committee

Security Committee

Space and Facilities Committee

Judicial Misconduct Complaints Committee (ad hoc)

Budget Committee

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Alabama, 1988 (Special Member since 1995)

There has been no lapse in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States, 1993

United States Court of Appeals for the Eleventh Circuit, 1988

United States District Court for the Middle District of Alabama, 1988

United States District Court for the Northern District of Alabama, 1988

United States District Court for the Southern District of Alabama, 1988

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Alabama Fraternal Order of Police # 59 Flying Wheel Lodge (1997 – 2004)

Arrowhead Country Club (1999 – 2004)

Downtown Club (Junior Member) (1990 – 1993)

Equestrian Order of the Holy Sepulchre of Jerusalem, Knight Commander with Star (2005 – present)

Knights of Columbus, Third Degree Knight (1982 – present)

National Rifle Association (1998 – 2004)

Red Elephant Club of Birmingham (2012 – present)

Republican Attorneys General Association (1997 – 2004)

Chair (2011)

Treasurer (1999 – 2000)

Rotary Club of Birmingham (Honorary Member) (2007 – present)

State and Local Officials Senior Advisory Committee to the President's

Homeland Security Advisory Council (2002 – 2003)

- b. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

Prior to my membership, the Rotary Club limited membership to men. Membership in the Equestrian Order of the Holy Sepulchre of Jerusalem is limited to Roman Catholics and membership in the Knights of Columbus is limited to male Roman Catholics. To the best of my knowledge, none of the other organizations listed in response to 11a currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies.

**12. Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

I wrote many opinion pieces during my time as Attorney General of Alabama that were reprinted widely across the state. I have included only one citation to each of those pieces in this list. Although I have searched my records, my memory, and internet databases for all opinion pieces I published during my service as Attorney General, this list may be incomplete. Copies of all pieces are supplied.

*Note, The Single Incident Inference of Municipal Liability Under Section 1983: City of Oklahoma City v. Tuttle*, 60 TUL. L. REV. 874 (1986).

*A Survey of Alabama Law Pertaining to Improper Closing Arguments*, 50 ALA. LAW. 9 (1989) (with Benjamin Rowe).

*Applying Batson in Civil Trials: The Greatest Sideshow on Earth!*, 22 CUMB. L. REV. 49 (1991), reprinted in 41 DEF. L. J. 551 (1992).

*Attorney general says time is now for tort reform*, MONTGOMERY ADVERTISER, Mar. 30, 1997.

*Litigators' Smoke Screen*, WALL ST. J., Apr. 7, 1997, at A-14.

*Religious Display Proper*, USA TODAY, Apr. 11, 1997, at 14-A.

*Civil justice reform: Time to put issue behind us*, Opelika-Auburn News, Apr. 13, 1997.

*The Law Is at Risk in Tobacco Suits*, N.Y. TIMES, Apr. 27, 1997, at E-15.

*When federal judges should be impeached*, HUNTSVILLE TIMES, July 25, 1997.

*In the people's hands: A legislative solution is more flexible*, DOTHAN EAGLE, Oct. 27, 1997.

*Prayer ruling limits students' rights*, TUSCALOOSA NEWS, Nov. 23, 1997.

*Judge DeMent's prayer ruling is vague and overly broad*, MOBILE REG., Nov. 23, 1997.

*Letter to the Editor: Pursuit of welfare fraud is intense*, BIRMINGHAM BUS. J., Dec. 22, 1997.

*The Attorney General's agenda for safe schools*, ALA. SCH. J., Jan. 30, 1998, at 5.

*Voters can restore religious freedom*, MONTGOMERY ADVERTISER, Oct. 23, 1998 (with Mark Wilkerson).

*Delinquent Justice: One State's Struggle with Endless Death Penalty Appeals*, WASH. LEGAL FOUND., Legal Backgrounder, vol. 13, no. 32 (1998).

*Trial Lawyers Target Rule of Law*, ATLANTA CONST., January 13, 1999, at A-11.

*Law clerk recalls judicial giant*, TUSCALOOSA NEWS, June 6, 1999.

*Preface to JOHN FUND & MARTIN MORSE WOOSTER, THE DANGERS OF REGULATION THROUGH LITIGATION: THE ALLIANCE OF PLAINTIFFS' LAWYERS AND STATE GOVERNMENTS* (2000).

*A Comparison of Abuses and Reforms of Class Actions and Multigovernment Lawsuits*, 74 TUL. L. REV. 1885 (2000), abridged version reprinted in METRO. CORP. COUNSEL, vol. 8, no. 11 (2000).

*The War on Guns*, in THE RULE OF LAW IN THE WAKE OF CLINTON, 135 (R. Pilon ed. 2000).

Book Review, 4 Q. J. AUSTRIAN ECON. 87 (2001) (reviewing MICHAEL KRAUSS, FIRE AND SMOKE: GOVERNMENT, LAWSUITS, AND THE RULE OF LAW (2000)).

*Battling Violence Against Women: States, Not Feds, Should Lead in Protection Efforts*, WASH. TIMES, January 11, 2000, at A-15.

*Welfare fraud: A crime that won't be tolerated*, CALL-NEWS DISPATCH, Feb. 10, 2000.

*State needs truth in sentencing*, SHELBY CO REPORTER, Mar. 15, 2000.

*Criminal sentencing system must be reformed*, OPP NEWS, Mar. 16, 2000.

*Lower electric bills*, WASH. COUNTY NEWS (CHATOM, ALA.), June 21, 2000.

*Alabama doesn't execute innocent people*, HUNTSVILLE TIMES, July 4, 2000, at A3.

*Workman's comp fraud is against the law*, ISLANDER (GULF SHORES, ALA.), Aug. 30, 2000.

*Adults must help save young people*, MONTGOMERY ADVERTISER, Sept. 11, 2000.

*Voters should repeal marriage ban*, MONTGOMERY ADVERTISER, Oct. 13, 2000.

*Alabama faces redistricting challenge*, DEMOCRAT REPORTER (LINDEN, ALA.), Dec. 21, 2000.

*Comment*, 31 SETON HALL L. REV. 604 (2001).

*Government "Regulation By Litigation" Must Be Terminated*, WASH. LEGAL FOUND., Legal Backgrounder, vol. 16, no. 21 (2001).

*Regulation Through Litigation*, 71 Miss. L. J. 613 (2001).

*A Report from the State's Law Firm*, 62 ALA. LAW. 264 (2001).

*Teach them young before jail*, GREENVILLE ADVOCATE, Jan. 17, 2001.

*Fighting theft of identities*, TIMES J. (FORT PAYNE, ALA.), Apr. 11, 2001.

*Liberal politics of ABA earn Bush's rebuke*, OUTLOOK (ALEXANDER CITY, ALA.), Apr. 20, 2001.

*Alabama needs new crime laws*, TIMES DAILY (FLORENCE, ALA.), May 3, 2001.

*Attorney General looking out for consumers*, VALLEY TIMES (LANETT, ALA.), Aug. 8, 2001.

*Cooperation can improve school safety*, MONTGOMERY ADVERTISER, Sept. 11, 2001.

*Alabama has law enforcement heroes*, OUTLOOK (ALEXANDER CITY, ALA.), Oct. 12, 2001.

*Critical issue: Restructuring sentencing system*, OUTLOOK (ALEXANDER CITY, ALA.), Nov. 7, 2001.

*Mentors needed to curb juvenile crime*, MONTGOMERY ADVERTISER, Jan. 15, 2002.

*Water Works issues unchanged over 30 years*, BIRMINGHAM NEWS, Jan. 27, 2002.

*Pryor: Mentoring works*, CULLMAN TIMES, Mar. 3, 2002.

*National Police Week*, TIMES STANDARD (MARION, ALA.), May 15, 2002.

*Protect yourself from repair fraud*, ST. CLAIR NEWS, May 16, 2002.

*Alabama's juvenile violent crime rate drops by 11 percent in 2001*, SOUTH ALABAMIAN, June 13, 2002.

*Moment of Silence; A Schoolroom Pause Is Not Coercive and Doesn't offend the Constitution*, CHARLOTTE OBSERVER, June 24, 2002, at 10A.

*'One nation under God' will survive*, SOUTHEAST SUN (ENTERPRISE, ALA.), July 10, 2002.

*The Demand for Clarity: Federalism, Statutory Construction, and the 2000 Term*, 32 CUMB. L. REV. 361 (2002).

*Madison's Double Security: In Defense of Federalism, the Separation of Powers, and the Rehnquist Court*, 53 ALA. L. REV. 1167 (2002).

*Federalism and Congressional Reform of National Class Actions*, WASH. LEGAL FOUND., Working Paper, No. 111 (2002).

*Outrageous Illinois decision strengthens case for death*, BIRMINGHAM NEWS, Feb. 23, 2003, at 2C.

*Christian Duty and the Rule of Law*, 34 CUMB. L. REV. 1 (2004).

*The Tempting of Western Civilization*, 5 ENGAGE: J. FEDERALIST SOC'Y PRAC. GROUPS 151 (2004) (reviewing ROBERT BORK, COERCING VIRTUE: THE WORLDWIDE RULE OF JUDGES (2003)).

*Lessons of a Sentencing Reformer from the Deep South*, 105 COLUM. L. REV. 943 (2005).

*The Murder of Father James Coyle, The Prosecution of Edwin Stephenson, and the True Calling of Lawyers*, 20 NOTRE DAME J. L. ETHICS & PUB. POL'Y 401 (2006).

*Foreign and International Law Sources in Domestic Constitutional Interpretation*, 30 HARV. J.L. & PUB. POL'Y 173 (2006).

*The Religious Faith and Judicial Duty of an American Catholic Judge*, 24 YALE L. & POL'Y REV. 347 (2006).

*Neither Force Nor Will, But Merely Judgment*, WALL ST. J., Oct. 4, 2006, at A14.

*Judicial Independence and the Lesson of History*, 68 ALA. LAW. 389 (2007).

*Not-So-Serious Threats to Judicial Independence*, 93 VA. L. REV. 1759 (2007), reprinted in THE BRIEF: A.B.A. SEC. TORT TRIAL & INS. PRAC., Winter 2008, 34.

*Moral Duty and the Rule of Law*, 31 HARV. J.L. & PUB. POL'Y 153 (2008).

*Keeping the Study of Law in Proper Perspective: Remarks to the Class of 2010*, 32 J. LEGAL PROF. 1 (2008).

*The Perspective of a Junior Circuit Judge on Judicial Modesty*, 60 FLA. L. REV. 1007 (2008).

*Federalism and Freedom: A Critical Review of ERWIN CHERMERINSKY, ENHANCING GOVERNMENT: FEDERALISM FOR THE 21ST CENTURY* (2008), 83 TUL. L. REV. 585 (2008).

*Bill Pryor Op-Ed: Alabama on verge of real ethics reform*, HUNTSVILLE TIMES, Dec. 5, 2010.

*Viewpoints: Make Laws as Strong as Possible*, BIRMINGHAM NEWS, Dec. 5, 2010.

*The Legacy of Albert John Farrah*, 72 ALA. LAW. 211 (2011).

*Federalism and Sentencing Reform in the Post-Blakely/Booker Era*, 8 OHIO ST. J. CRIM. L. 515 (2011).

*The Unbearable Rightness of Marbury v. Madison: Its Real Lessons and Irrepressible Myths*, 12 ENGAGE: J. FEDERALIST SOC'Y PRAC. GROUPS 94 (2011).

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If



you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

*Report of the Task Force on Tobacco Litigation*, 27 CUMB. L. REV. 577 (1997).  
Copy supplied.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

Testimony on Judicial Activism before the United States Senate Judiciary Committee, Subcommittee on the Constitution, Federalism, and Property Rights, July 15, 1997. Copy supplied.

Testimony on the Proposed Innocence Protection Act of 2001 before the United States Senate Judiciary Committee, June 27, 2001. Copy supplied.

Testimony on New Source Review Under the Clean Air Act, Joint Hearing before the United States Senate Judiciary Committee and the Environment & Public Works Committee, July 16, 2002. Copy supplied.

Testimony regarding my nomination to be Circuit Judge for the Eleventh Circuit before the United States Senate Judiciary Committee, June 11, 2003. Copy supplied.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

As a candidate for election in two statewide races, Attorney General of Alabama, and a United States Circuit Judge, I have spoken extensively to the public. I have searched my memory and my records to compile this list of speeches. Despite my best efforts, it is possible that this list is incomplete.

I have been unable to find any copies or transcripts of the vast majority of speeches I gave as the Attorney General of Alabama, and the press releases about those speeches have long since been removed from the website of the Office of the Attorney General. For those speeches that I have given since my appointment

to the federal bench, I have provided citations where applicable, and copies or videos of my remarks where I could find them.

Investiture Speech of Attorney General Bill Pryor, State Capitol, Old House Chambers, Montgomery, Alabama, Jan. 2, 1997.

Baccalaureate Speech to the 1997 Graduating Class of Independent Methodist School, Mobile, Alabama, Mar. 25, 1997.

Commencement Speech to 1997 Graduating Class of McGill-Toolen School, Mobile, Alabama, May 31, 1997.

"The Rule of Law and the Tobacco Settlement," Remarks before the Policy Forum of the CATO Institute, Washington, District of Columbia, August 5, 1997.

"Federalism and the Court: Do Not Uncork the Champagne Yet," Annual Conference, National Lawyer's Division, Federalist Society for Law and Public Policy Studies, Federalism and Separation of Powers Practice Group, Washington, District of Columbia, October 16, 1997, <http://www.fed-soc.org/publications/detail/federalism-revived-the-printz-and-city-of-boerne-decisions>.

Remarks at the Truth in Sentencing Press Conference, Montgomery, Alabama, January 23, 1998.

Remarks at the FOP Memorial Service for National Law Enforcement Week, State Capitol Lawn, Montgomery, Alabama, May 14, 1998.

Remarks at the National Drug Court Week Inaugural Graduation Ceremony, Tuscaloosa, Alabama, June 3, 1998.

Remarks at the Annual Banquet of the Alabama Peace Officers Association, Holiday Inn, Montgomery, Alabama, June 18, 1998.

Remarks to the Automobile Dealers Association of Alabama Annual Banquet, Sandestin Resort, Destin, Florida, June 19, 1998.

Remarks for National Drug Court Week, Inaugural Graduation Ceremony, Birmingham, Alabama, July 9, 1998.

Inauguration Speech of Attorney General Bill Pryor, Alabama State Capitol, Montgomery, Alabama, January 18, 1999.

"The Smoking Gun—The Next Case of Lawsuit Abuse," American Shooting Sports Council Annual Convention, Atlanta, Georgia, February 1, 1999.

“Big Brother versus Big Business: The Latest Cases of Lawsuit Abuse,”  
American Tort Reform Association Annual Meeting, Four Seasons Hotel,  
Washington, District of Columbia, March 9, 1999.

“When States Sue the Feds: Recent Developments in Federalism Litigation,”  
Federalist Society for Law & Public Policy Studies and the Heritage Foundation,  
Washington, District of Columbia, March 23, 1999.

“Big Brother versus Big Business: The Latest Cases of Lawsuit Abuse,”  
Vanderbilt Federalist Society, Nashville, Tennessee, April 15, 1999.

National Law Enforcement Week Speech, Fraternal Order of Police Memorial  
Service, Alabama State Capitol Grounds, Montgomery, Alabama, May 10, 1999.

“The Dangerous Trend of Novel Government Tort Suits Against Entire  
Industries,” Birmingham Chapter of the Federalist Society for Law and Public  
Policy Studies, Harbert Center, Birmingham, Alabama, May 12, 1999.

Remarks to the D.A.R.E. Drug Abuse Resistance Education Program, Graduating  
Class, Birmingham, Alabama, May 12, 1999.

Commencement Speech for Spring Graduation at Northeast Louisiana University,  
Monroe, Louisiana, May 15, 1999.

Remarks to the Business Council of Alabama Environment and Energy  
Conference, The Grand Hotel, Point Clear, Alabama, June 14, 1999.

“Novel Government Lawsuits Against Industries: An Assault of the Rule of  
Law,” The New Business of Government-Sponsored Litigation: State Attorneys  
General & Big City Lawsuits, sponsored by the Federalist Society, the Manhattan  
Institute, and U.S. Chamber of Commerce Institute for Legal Reform,  
Washington, District of Columbia, June 22, 1999, <http://www.fed-soc.org/publications/detail/novel-government-lawsuits-against-industries-an-assault-on-the-rule-of-law>.

Remarks to the Selma Police Academy Graduating Class, Selma, Alabama, July  
23, 1999.

“Curbing the Abuses of Government Lawsuits Against Industries,” American  
Legislative Exchange Council, Nashville, Tennessee, August 11, 1999.

Remarks at Christian Coalition Road to Victory Rally, Washington Hilton,  
Washington, District of Columbia, October 1, 1999.

“Curbing the Abuses of Government Lawsuits Against Industries,” American Tort  
Reform Association Annual Legislative Conference for State Coalition Leaders,

New York, New York, October 4, 1999, and American Tort Reform Conference, San Antonio, Texas, on October 5, 1999. Also presented to American Trucking Association 1999 Annual Management Conference, Orlando, Florida, on November 3, 1999.

“Should Business Support Federalism?,” Annual Conference, National Lawyer’s Division, Federalist Society for Law and Public Policy Studies, Corporations, Securities, and Antitrust Practice Group, Washington, District of Columbia, November 12, 1999.

“Curbing the Abuses of Government Lawsuits Against Industries,” Civil Justice Reform Group Steering Committee, Washington, District of Columbia, December 8, 1999.

Speech by Alabama Attorney General Bill Pryor for Dadeville Chamber of Commerce, Still Waters Resort, Dadeville, Alabama, January 11, 2000.

Speech by Alabama Attorney General Bill Pryor for State Farm Ambassadors of the Alabama-Mississippi Regional Offices, Birmingham, Alabama, February 9, 2000.

Speech to the Annual Banquet of the Alabama Chiefs of Police, Embassy Suites Hotel, Montgomery, Alabama, February 17, 2000.

“Prosecuting Worker Compensation Fraud,” 1999 Safety Seminar and Awards Luncheon, Auburn University Conference Center, Auburn, Alabama, February 23, 2000.

Remarks at the Catholic High School Prayer Breakfast, Montgomery, Alabama, March 7, 2000.

Remarks to the Moody Business Association, Moody, Alabama, March 9, 2000.

Speech to Alabama School Safety Leadership Training Conference, Keynote Luncheon, Lake Guntersville Lodge, Guntersville, Alabama, April 18, 2000.

“Novel Theories of Corporate Liability,” Speech to Southeastern Corporate Law Institute, The Grand Hotel, Point Clear, Alabama, April 29, 2000.

“Improving the Image of the Legal Profession by Restoring the Rule of Law,” Law Day Luncheon, Montgomery, Alabama, May 3, 2000.

Speech to Troy Exchange Club, One Nation Under God Luncheon, Holiday Inn, Troy, Alabama, May 4, 2000.

“Restorative Justice: How the Church Can Partner with Government,” National Forum on Restorative Justice, Hyatt Regency, Reston, Virginia, May 5, 2000.

Commencement Speech for the Troy State University Spring 2000 Graduation, Troy, Alabama, May 12, 2000.

“The Supreme Court as Guardian of Federalism,” Federalist Society for Law and Public Policy Studies, Federalism and Separation of Powers Practice Group and The Heritage Foundation’s Congress and the Constitution Series: “Federalism: The Quiet Revolution,” Washington, District of Columbia, July 11, 2000.

“Protecting Privacy: Some First Principles,” Privacy Symposium, American Council of Life Insurers, Grand Hyatt Hotel, Washington, District of Columbia, July 11, 2000.

“Extortion Parading as Law: The War on Guns,” CATO Institute Conference on the “Rule of Law in the Wake of Clinton,” Washington, District of Columbia, July 12, 2000.

“Curbing the Abuses of Government Lawsuits Against Industries,” Conference of State Manufacturers Association, Hilton Head, South Carolina, August 9, 2000.

Remarks to the Alabama Citizens for Life, Birmingham Area Chapter, Kickoff Meeting, Shelby County Library, September 5, 2000.

Greetings from Attorney General Bill Pryor to the Alabama Lawyers Association, Montgomery, Alabama, September 19, 2000.

“Practical Reform of the Constitution of Alabama,” Symposium on the Alabama Constitution, Jacksonville State University, Jacksonville, Alabama, September 26, 2000.

Remarks of Attorney General Bill Pryor to St. Mary’s Parish, Mobile, Alabama, October 8, 2000.

Remarks to the Alabama State Bar Board of Bar Commissioners Regarding the Moratorium Issue, Alabama State Bar Meeting, Montgomery, Alabama, October 27, 2000.

“Curbing the Abuses of Government Lawsuits Against Industries,” Annual Meeting of the Alabama Civil Justice Reform Committee, Embassy Suites, Montgomery, Alabama, October 31, 2000.

“Fulfilling the Reagan Revolution by Limiting Government Litigation,” An Address at the Reagan Forum, The Ronald Reagan Presidential Library, Simi Valley, California, November 14, 2000.

"The Future of Federalism," Federalism After the Election: Opportunities and Challenges, Remarks before the Federalism and Separation of Powers Practice Group, National Lawyers Convention, The Federalist Society for Law & Public Policy, The Mayflower Hotel, Washington, District of Columbia, November 18, 2000.

"Curbing the Abuses of Government Lawsuits Against Industries," Annual States and National Policy Summit of the American Legislative Exchange Council, Washington, District of Columbia, December 7, 2000.

"The State of Law Enforcement," The Alabama Law Enforcement Summit, Montgomery Civic Center, Montgomery, Alabama, December 12, 2000.

Commencement Speech of Attorney General Bill Pryor for the Faulkner University Fall Graduation, Montgomery, Alabama, December 16, 2000.

"The One Thing Our Children Need the Most," 2001 Faith Summit on Mentoring, Scrushy Conference Center, Birmingham, Alabama, January 9, 2001.

"Tort Liability, the Structural Constitution, and the States," Federalist Society Litigation Practice Group Symposium, The National Press Club, Washington, District of Columbia, January 11, 2001.

Remarks at a Ceremony Honoring Dr. Martin Luther King, Jr., Alabama State Capitol, Montgomery, Alabama, January 15, 2001.

Statement in Support of Nomination of John Ashcroft for United States Attorney General, Senate Russell Building, Room 189, Washington, District of Columbia, January 18, 2001.

"The State of the State of Law Enforcement," The Alabama Sheriff's Association Winter Conference, Embassy Suites, Montgomery, Alabama, January 30, 2001.

Alabama Cattlemen's Association Legislative Luncheon, Montgomery Civic Center, Montgomery, Alabama, February 16, 2001.

Remarks to Southwest Alabama Better Business Bureau Annual Luncheon, Mobile, Alabama, February 28, 2001.

"Fulfilling the Reagan Revolution by Limiting Government Litigation," Joint Conference presented by The Alabama Policy Institute, The American Legislative Exchange Council, The Heritage Foundation, and The State Policy Network, The Wynfrey Hotel, Birmingham, Alabama, March 2, 2001.

"Fighting for Federalism," Atlanta Lawyers Chapter of the Federalist Society, Atlanta, Georgia, March 28, 2001.

"Fulfilling the Reagan Revolution by Limiting Government Litigation," 24<sup>th</sup> Annual Resource Bank Meetings of the Heritage Foundation, Sheraton Society Hilton, Philadelphia, Pennsylvania, April 18, 2001.

Remarks to the Fraternal Order of Police Memorial Service, State Capitol Lawn, Montgomery, Alabama, May 4, 2001.

"Competitive Federalism in Environmental Enforcement," Alabama State Bar Environmental Section, 10th Annual Beach and Bar Symposium, Environmental and Business Law Under the New Bush Administration, Division of Responsibility Between the State and Federal Governments, Marriott's Grand Hotel, Point Clear, Alabama, June 8, 2001.

"The Demand for Clarity: Federalism, Statutory Construction, and the 2000 Term—Viva La Revolution?" Federalism and the Supreme Court's October 2000 Term, the Federalism Project of the American Enterprise Institute, Washington, District of Columbia, July 11, 2001, text available at 32 CUMB. L. REV. 361 (2002).

"What Hath the MSA Wrought? The Consequences of the State Tobacco Litigation," Mississippi Bar Litigation and General Practice Section Annual Meeting at the Sandestin Beach Hilton, July 13, 2001.

"Federalism vs. Economic Efficiency," 2001 American Legislative Exchange Council Annual Meeting, Marriott Marquis, New York, New York, August 1, 2001.

"The One Thing Our Children Need the Most," Keynote Remarks to Mentor Birmingham, August 3, 2001, text available at 53 ALA. L. REV. 1167 (2002).

"Should There Be a Moratorium on the Death Penalty in Alabama?" A Debate with Senator Hank Sanders, Spring Hill College, Mobile, Alabama, September 10, 2001.

Speech of Alabama Attorney General Bill Pryor to the State Law Enforcement Summit, Montgomery Civic Center, Montgomery, Alabama, October 16, 2001.

Garrett, Disability Policy, and Federalism: A Symposium on Board of Trustees of the University of Alabama v. Garrett, University of Alabama School of Law, Tuscaloosa, Alabama, October 26, 2001.

“Regulation by Litigation: What Next for the State Attorneys General?”  
Symposium: Litigation in Mississippi Today, University of Mississippi School of Law, November 9, 2001.

Moment of Silence Debate, Panel on Religious Liberties, 15th Annual Lawyers Convention of the Federalist Society, The Mayflower Hotel, Washington, District of Columbia, November 16, 2001, [http://www.fed-soc.org/doclib/20070913\\_RelLiberties2001Lawcon.pdf](http://www.fed-soc.org/doclib/20070913_RelLiberties2001Lawcon.pdf).

Debate with Walter Dellinger, former Solicitor General of the United States, broadcast on the NPR program, “Justice Talking,” on November 16, 2001, [www.justicetalking.org/getshow.asp?showid=211](http://www.justicetalking.org/getshow.asp?showid=211).

“The One Thing Our Children Need the Most,” Big Brothers/Big Sisters of Greater Birmingham, Faith Summit on Mentoring, Birmingham, Alabama, January 15, 2002.

Montgomery County Partners in Education, Tutor Recognition Luncheon, Montgomery, Alabama, January 24, 2002.

Remarks of Attorney General Bill Pryor to the U.S. Chamber of Commerce Committee, South Seas Resort, Captiva Island, Florida, January 26, 2002.

Big Brothers/Big Sisters Legislative Breakfast, Montgomery, Alabama, January 31, 2002.

“Prosecuting Worker Compensation Fraud,” Alabama Textile Manufacturers Association Safety Seminar and Achievement Awards Program, Montgomery, Alabama, February 21, 2002.

WAKA Protect and Serve Reception, Channel 8 Studio, Montgomery, Alabama, February 28, 2002.

“Madison’s Double Security: In Defense of Federalism, the Separation of Powers, and the Rehnquist Court,” Louisiana Lawyers Chapter of the Federalist Society, Dickie Brennan’s Steakhouse, New Orleans, Louisiana, March 1, 2002, text available at 53 ALA. L. REV. 1167 (2002).

Remarks of Attorney General Bill Pryor at the 2002 Annual Membership Meeting of the American Tort Reform Association, Four Seasons, Washington, District of Columbia, March 14, 2002.

Montgomery Association of Legal Secretaries Week, Capital City Club, Montgomery, Alabama, March 26, 2002.



Montgomery United Way Mentor Alabama Recognition Speech, Montgomery, Alabama, March 28, 2002.

Alabama Education Association Professional Rights and Responsibilities Conference, Montgomery Civic Center, Montgomery, Alabama, April 12, 2002.

VOCAL Annual Conference on Victim Rights, Montgomery, Alabama, April 24, 2002.

Comments at the FOP Memorial Service, Montgomery, Alabama, May 3, 2002.

Speech to the Georgia Washington Middle School Honor Roll Banquet, Montgomery, Alabama, May 7, 2002.

Comments at the 6th Annual Law Enforcement Officers' Memorial Service for the Alexander City Police Department and the Tallapoosa County Sheriff's Department, Alexander City, Alabama, May 15, 2002.

Huntsville Chapter of the Alabama Education Association, Huntsville, Alabama, May 19, 2002.

Commencement Speech for 2002 Graduating Class at Marion Military Institute, Marion, Alabama, May 25, 2002.

Statement of Attorney General Pryor at press conference regarding the Prison Rape Reduction Act of 2002, Washington, DC, approx. June 2002.

Opening Remarks by Attorney General Bill Pryor, "Is the Death Penalty in Alabama Fair?" A Debate with Brian Stevenson before the Downtown Rotary Club, Birmingham, Alabama, August 28, 2002.

Speech to Odenville Middle School, Student Government Day, St. Clair County, October 29, 2002.

Wither Federalism?: The Impact of Globalization and the War on Terror, Showcase Roundtable, National Lawyers' Convention, Federalist Society for Law & Public Policy Studies, Washington, District of Columbia, November 16, 2002.

Comments of Attorney General Bill Pryor for Catholic Education Week, St. Mary's School, McGill-Toolen High School, Heart of Mary School, and Holy Family Catholic School, Mobile, Alabama, January 28, 2003.

Remarks of Attorney General Bill Pryor at the Investiture Ceremony of Judge Mark Fuller, U.S. District Court for the Middle District of Alabama, February 20, 2003, Montgomery, Alabama.

Speech of Attorney General Bill Pryor, "How We Can Improve the Lives of Children in Alabama," Alabama Children's Policy Council Conference, Birmingham, Alabama, February 27, 2003.

Commencement speech at Regent University, Virginia Beach, Virginia, May 8, 2004, <http://www.c-spanvideo.org/program/181765-1>.

Remarks at the World Forum, American Enterprise Institute, Beaver Creek, Colorado, June 19-23, 2003.

Remarks to the St. Thomas More Society, St. Stephen's Catholic Church, Birmingham, Alabama, August 26, 2004.

"The Duty of a Catholic Lawyer or Judge," Christian Legal Society, Birmingham, Alabama, November 9, 2004. This speech was an earlier version of the text published at 24 YALE L. & POL'Y REV. 347 (2006).

Moderator, Panel Discussion on the Use of Foreign Law in American Courts, National Lawyers' Convention, Federalist Society for Law and Public Policy, November 11, 2004.

"The Murder of Father James Coyle, the Prosecution of Edwin Stephenson, and the True Calling of Lawyers," Remarks to the Federal Bar Association, Atlanta, Georgia, January 12, 2005. This speech was an earlier version of the text published at 20 NOTRE DAME J.L. ETHICS & PUB. POL'Y 401 (2006).

Keynote Address, Symposium, Sentencing: What's at Stake for the States?, Columbia Law Review, Columbia Law School, New York, New York, January 21, 2005, text available at 105 COLUM. L. REV. 943 (2005).

"The Murder of Father James Coyle, the Prosecution of Edwin Stephenson, and the True Calling of Lawyers," St. Thomas More Society, Atlanta, Georgia, June 22, 2005. This speech was an earlier version of the text published at 20 NOTRE DAME J.L. ETHICS & PUB. POL'Y 401 (2006).

"The Murder of Father James Coyle, the Prosecution of Edwin Stephenson, and the True Calling of Lawyers," Christian Legal Society, Mobile, Alabama, August 25, 2005. This speech was an earlier version of the text published at 20 NOTRE DAME J.L. ETHICS & PUB. POL'Y 401 (2006).

"The Murder of Father James Coyle, the Prosecution of Edwin Stephenson, and the True Calling of Lawyers," Birmingham Jewish Federation, Birmingham, Alabama, September 8, 2005. This speech was an earlier version of the text published at 20 NOTRE DAME J.L. ETHICS & PUB. POL'Y 401 (2006).

Religion and Judging, Panel Discussion, Sarah Smith Memorial Conference on Moral Leadership, Yale Center for Faith and Culture, Yale Law School and Yale Divinity School, New Haven, Connecticut, September 16, 2005.

"The Duty of a Catholic Lawyer or Judge," St. Paul's Cathedral, Birmingham, Alabama, September 21, 2005. This speech was an earlier version of the text published at 24 YALE L. & POL'Y REV. 347 (2006).

Moderator for Panel Discussion on Consumer Protection Statutes/Unfair and Deceptive Acts and Practices, National Lawyers' Convention, Federalist Society for Law and Public Policy, Washington, District of Columbia, November 11, 2005.

"The Murder of Father James Coyle, the Prosecution of Edwin Stephenson, and the True Calling of Lawyers," Notre Dame University School of Law, South Bend, Indiana, January 24, 2006, text available at 20 NOTRE DAME J.L. ETHICS & PUB. POL'Y 401 (2006).

"The Religious Faith and Judicial Duty of an American Catholic Judge," Inaugural Lecture, Catholic Think Tank America, Notre Dame University, Student Government Association, South Bend, Indiana, January 24, 2006, text available at 24 YALE L. & POL'Y REV. 347 (2006).

The Murder of Father James Coyle, the Prosecution of Edwin Stephenson, and the True Calling of Lawyers," Northwestern School of Law Federalist Society, Chicago, Illinois, January 25, 2006, text available at 20 NOTRE DAME J.L. ETHICS & PUB. POL'Y 401 (2006).

Moderator of Panel Discussion, Birmingham Lawyers Chapter, Federalist Society, Birmingham, Alabama, February 16, 2006.

Moderator, Panel Discussion on Foreign and International Law Sources in Domestic Constitutional Interpretation, Columbia Law School, New York, New York, February 25, 2006.

"Lessons of a Sentencing Reformer from the Deep South," Leadership Birmingham's Social Justice Program, Birmingham, Alabama, March 9, 2006, text available at 105 COLUM. L. REV. 943 (2005).

Pi Sigma Alpha Distinguished Lecture, St. Joseph's University, Philadelphia, Pennsylvania, April 27, 2006, text available at 24 YALE L. & POL'Y REV. 347 (2006).

Keynote Address, Ave Maria Law Review Banquet, Detroit, Michigan, April 28, 2006.

Remarks at Commencement, John Marshall Law School, Atlanta, Georgia, May 13, 2006. Copy supplied.

"The Murder of Father James Coyle, the Prosecution of Edwin Stephenson, and the True Calling of Lawyers," Birmingham Lawyers Chapter, Federalist Society, Birmingham, Alabama, July 20, 2006, text available at 20 NOTRE DAME J.L. ETHICS & PUB. POL'Y 401 (2006).

Moderator of a Panel Discussion on Spoiling for a Fight: The Rise of Eliot Spitzer, American Enterprise Institute, Washington, District of Columbia, August 7, 2006.

Vanderbilt School of Law and Nashville Lawyers Chapter, Federalist Society, Nashville, Tennessee, August 31, 2006.

Moderator, Birmingham Lawyers Chapter, Federalist Society, Birmingham, Alabama, October 19, 2006.

Panelist, St. Thomas More Society, St. Paul's Cathedral, Birmingham, Alabama, November 9, 2006.

Moderator, Panel Discussion on Executive Power in Wartime, National Lawyers Convention, Federalist Society for Law and Public Policy Studies, Washington, District of Columbia, November 17, 2006, [http://www.fed-soc.org/doclib/20080314\\_FedSepEpstein.pdf](http://www.fed-soc.org/doclib/20080314_FedSepEpstein.pdf). A recording of the event is available at <http://www.c-spanvideo.org/program/195433-2>.

Remarks for a Continuing Legal Education Seminar on Appellate Practice, Florida Bar Appellate Section, Telephone Conference, January 16, 2007.

Remarks at Continuing Legal Education Seminar for Appellate Practice, University of Alabama School of Law, Tuscaloosa, Alabama, February 9, 2007.

Keynote Address, 26th Annual National Student Symposium: Law & Morality, The Federalist Society for Law & Public Policy Studies, Northwestern University School of Law, Chicago, Illinois, February 24, 2007, video at <http://www.fed-soc.org/publications/detail/judge-pryor-address-event-audiovideo>. This speech was an earlier version of the text published at 93 VA. L. REV. 1759 (2007).

McGlinchey Lecture, Tulane Law School, New Orleans, Louisiana, February 26, 2007. This speech was an earlier version of the text published at 93 VA. L. REV. 1759 (2007).

Moderator of Panel on Constitutional Reform, Birmingham Lawyers Chapter, Federalist Society, Birmingham, Alabama, March 1, 2007.

Columbia Law School Federalist Society, New York, New York, March 7, 2007.

Harvard Law School Federalist Society, Cambridge, Massachusetts, March 8, 2007.

"Not-so-Serious Threats to Judicial Independence," Ola B. Smith Lecture, University of Virginia School of Law, Charlottesville, Virginia, March 19, 2007, text available at 93 VA. L. REV. 1759 (2007).

Keynote Address, Cumberland Law Review, Birmingham, Alabama, March 29, 2007.

"Not-so-Serious Threats to Judicial Independence," University of Alabama School of Law, Tuscaloosa, Alabama, April 11, 2007, text available at 93 VA. L. REV. 1759 (2007).

"Not-so-Serious Threats to Judicial Independence," Stanford Law School, Stanford, California, April 18, 2007, text available at 93 VA. L. REV. 1759 (2007).

Remarks to 1Ls, University of Alabama School of Law, Tuscaloosa, Alabama, August 17, 2007, text available at 32 J. LEGAL PROF. 1 (2008).

Invocation, Rotary Club, Birmingham, Alabama, August 22, 2007.

Panel Discussion on Effective Appellate Advocacy, Atlanta, Georgia, September 6, 2007.

Moderator, The God Delusion Debate: Richard Dawkins v. John Lennox, Fixed-Point Foundation, Birmingham, Alabama, October 3, 2007, available on DVD at <http://www.fixed-point.org/>.

Moderator, Panel Discussion, Religion: Early America, and the Fourteenth Amendment, National Lawyers' Convention, Federalist Society for Law and Public Policy Studies, Washington, District of Columbia, November 15, 2007, <http://www.fed-soc.org/publications/detail/religion-early-america-and-the-fourteenth-amendment-event-audiovideo>.

"The Murder of Father James Coyle, the Prosecution of Edwin Stephenson, and the True Calling of Lawyers," Marquette University Law School, St. Thomas More Society & the Federalist Society, January 29, 2008, Milwaukee, Wisconsin, January 29, 2008, text available at 20 NOTRE DAME J.L. ETHICS & PUB. POL'Y 401 (2006).

Dunwoody Distinguished Lecture in Law, Levin College of Law, University of Florida, Gainesville, Florida, April 18, 2008, text available at 60 FLA. L. REV. 1007 (2008).

“Not-so-Serious Threats to Judicial Independence,” Remarks to the Heritage Foundation, Atlanta, Georgia, April 23, 2008, text available at 93 VA. L. REV. 1759 (2007).

Remarks to 1Ls, University of Alabama School of Law, Tuscaloosa, Alabama, August 15, 2008, text available at 32 J. LEGAL PROF. 1 (2008).

Keynote Address, The Future of Federalism, American Enterprise Institute, Federalist Society for Law & Public Policy Studies, and Chapman University School of Law, Washington, District of Columbia, September 12, 2008, <http://www.fed-soc.org/publications/detail/address-by-william-h-pryor-jr-event-audiovideo>.

Remarks to John Carroll Catholic High School Students on Catholic Teaching About Voting, Birmingham, Alabama, October 14, 2008.

Participated in Mock Oral Argument as Part of Panel, 2008 Eleventh Circuit Appellate Practice Conference, Atlanta, Georgia, October 23, 2008.

A Dialogue on Judicial Independence (with ABA Pres. Thomas Wells), National Lawyers Convention, Federalist Society for Law & Public Policy Studies, Washington, District of Columbia, November 21, 2008, <http://www.fed-soc.org/publications/detail/judicial-independence-dialogue-audiovideo>.

Remarks on Life Choices in Career, Alabama State Bar, Renaissance Ross Bridge Golf Resort & Spa, Birmingham, Alabama, January 16, 2009.

A Dialogue on Judicial Independence (with Prof. Stephen Carter), Yale Student Chapter of the Federalist Society for Law & Public Policy Studies, Yale Law School, New Haven, Connecticut, January 27, 2009.

Remarks to William and Mary School of Law Federalist Society, Williamsburg, Virginia, March 4, 2009.

“Moral Duty and the Rule of Law,” Duke University School of Law Federalist Society, Durham, North Carolina, April 14, 2009, text available at 31 HARV. J.L. & PUB. POL’Y 153 (2008).

Moderator, Panel Discussion: Historical Perspectives of the Civil Rights Movement, Eleventh Circuit Judicial Conference, Birmingham, Alabama, April 31, 2009.

Participated in a Panel Discussion on Appellate Practice, Alabama State Bar, Point Clear, Alabama, July 16, 2009.

Remarks to 1Ls, University of Alabama School of Law, Tuscaloosa, Alabama, August 14, 2009, text available at 32 J. LEGAL PROF. 1 (2008).

“What Appellate Judges Want to See in a Brief and Hear at Oral Argument,” Continuing Legal Education Appellate Practice Seminar, Alabama State Bar, Birmingham, Alabama, October 2, 2009.

Moderator, Panel Discussion on the Future of Preemption, National Lawyers Convention, Federalist Society for Law and Public Policy, Washington, District of Columbia, November 12, 2009, <http://www.fed-soc.org/publications/detail/the-future-of-federal-pre-emption-event-audiovideo>.

“The Perspective of a Junior Circuit Judge on Judicial Modesty,” Bankruptcy Law Seminar, Birmingham, Alabama, December 4, 2009, text available at 60 FLA. L. REV. 1007 (2008).

“The Perspective of a Junior Circuit Judge on Judicial Modesty,” University of Alabama School of Law Federalist Society, Tuscaloosa, Alabama, March 3, 2010, text available at 60 FLA. L. REV. 1007 (2008).

“The Perspective of a Junior Circuit Judge on Judicial Modesty,” Harvard Law School Federalist Society, Cambridge, Massachusetts, March 11, 2010, text available at 60 FLA. L. REV. 1007 (2008).

“The Perspective of a Junior Circuit Judge on Judicial Modesty,” Washington & Lee Law School, Lexington, Virginia, March 18, 2010, text available at 60 FLA. L. REV. 1007 (2008).

“The Perspective of a Junior Circuit Judge on Judicial Modesty,” Vanderbilt University Law School, Nashville, Tennessee, March 30, 2010, text available at 60 FLA. L. REV. 1007 (2008).

“Moral Duty and the Rule of Law,” Vanderbilt University Law School, Nashville, Tennessee, March 30, 2010, <http://www.youtube.com/watch?v=eb4ZnmLQMgI>.

“The Perspective of a Junior Circuit Judge on Judicial Modesty,” University of Chicago Law School, Chicago, Illinois, May 11, 2010, text available at 60 FLA. L. REV. 1007 (2008).

Moderator of a Panel Discussion, Birmingham Lawyers Chapter, Federalist Society, Birmingham, Alabama, May 20, 2010.

Luncheon Address, Federalism and Sentencing Reform in a Post-Blakely/Booker Era, Annual Meeting, National Association of Sentencing Commissions, Point Clear, Alabama, August 9, 2010, text available at 8 OHIO ST. J. CRIM. L. 515 (2011).

Remarks to 1Ls, University of Alabama School of Law, Tuscaloosa, Alabama, August 12, 2010, text available at 32 J. LEGAL PROF. 1 (2008).

“Federalism and Sentencing Reform,” Cumberland Law School, Birmingham, Alabama, September 30, 2010, text available at 8 OHIO ST. J. CRIM. L. 515 (2011).

Remembrance of the Tulane Speech, Originalism Dinner and Symposium, Commemorating the 25th Anniversary of the Great Debate on Originalism Inaugurated by Attorney General Edwin Meese III, Heritage Foundation, Supreme Court of the United States, Washington, District of Columbia, November 10, 2010. Copy supplied.

Moderator, Panel Discussion on Christian Legal Society v. Martinez, National Lawyers Convention, Federalist Society for Law and Public Policy Studies, Washington, District of Columbia, November 19, 2010, <http://www.fed-soc.org/publications/detail/christian-legal-society-vs-martinez-event-audiovideo>.

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- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Over the last 23 years, I have given well over 1,000 interviews to various media outlets. In particular, during my seven years as Attorney General of Alabama, I spoke regularly with the press. Although I have searched LexisNexis and my memory, it is possible that I have given others that I have been unable to recall or identify. Copies are supplied.

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**13. Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

Attorney General of Alabama (1997 – 2004)

Appointed: January 2, 1997, by Governor Fob James to complete the remaining two-year term of Jeff Sessions who was elected to the U.S. Senate.

Elected: November 3, 1998, to first four-year term.

Reelected: November 5, 2002, to final two-year term.

Deputy Attorney General (1995 – 1997)

Appointed by Attorney General Jeff Sessions and served at his pleasure.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I was the Republican candidate for Attorney General of Alabama in the elections held on November 3, 1998, and November 5, 2002.

I have also served as:

Alabama Co-Chairman, Bush-Cheney Presidential Campaign (2000)  
 Bush Delegate, Republican National Convention (2000)  
 Homewood Coordinator, Fob James for Governor (1994)  
 Volunteer, Attorney-Advisor, Jeff Sessions for Attorney General (1994)  
 Chairman, Statewide Judicial Candidates Recruitment Committee, Alabama, Republican Party (1993 – 1994)  
 Volunteer, Spencer Bachus for Attorney General (1990)  
 Louisiana Young Republican National Committeeman (1984 – 1986)  
 Volunteer, Dave Treen for Governor (Louisiana) (1983)  
 President, College Republicans at Northeast Louisiana University (1982 – 1984)

14. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

1987 – 1988  
 Law Clerk for the Honorable John Minor Wisdom  
 United States Court of Appeals for the Fifth Circuit

- ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1988 – 1991  
Cabaniss, Johnston, Gardner, Dumas & O’Neal  
2001 Park Place North, Suite 700  
Birmingham, AL 35203  
Associate Attorney

1991 – 1995  
Walston, Stabler, Wells, Anderson & Bains (now part of Jones Walker)  
One Federal Place  
1819 Fifth Avenue North, Suite 1100  
Birmingham, AL 35203  
Associate Attorney

1995 – 2004  
State of Alabama  
501 Washington Avenue  
Montgomery, AL 36104  
Attorney General (1997 – 2004)  
Deputy Attorney General (1995 – 1997)

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have never served as a mediator or arbitrator.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

Cabaniss, Johnston, Gardner, Dumas & O’Neal (1988 – 1991):  
commercial litigation practice, including complex litigation involving secured transactions, securities fraud, and construction/engineering malpractice; appellate practice; railroad and employment disputes; antitrust counseling; solo trial experience; member of firm recruiting committee

Walston, Stabler, Wells, Anderson & Bains (1991 – 1995): commercial litigation practice, including complex litigation involving antitrust, bankruptcy, banking, elections, trade secrets, insurance, municipal tax, and

international commercial disputes; trial and appellate experience; member of firm library and space committees

Deputy Attorney General, State of Alabama (1995 – 1997): lead counsel for the State of Alabama in all major civil litigation with emphasis on voting rights, civil rights, and election law

Attorney General, State of Alabama (1997 – 2004): chief law enforcement officer of Alabama; general government practice including civil, criminal, and administrative law; trial and appellate practice

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

At Cabaniss, Johnston, Gardner, Dumas & O’Neal: private businesses, banks and financial institutions, political party, and local government entities

Walston, Stabler, Wells, Anderson & Bains: private businesses, local governments

At the Alabama Attorney General’s Office: government officials, state departments, taxpayers of the State of Alabama

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Before becoming Attorney General, I appeared in court frequently on pretrial and motion proceedings and occasionally in trial and before appellate courts. As Attorney General, most of my court appearances involved appellate proceedings.

- i. Indicate the percentage of your practice in:

- |                            |      |
|----------------------------|------|
| 1. federal courts;         | 33%  |
| 2. state courts of record; | 33%  |
| 3. other courts;           | 33%  |
| 4. administrative agencies | None |

- ii. Indicate the percentage of your practice in:

- |                          |     |
|--------------------------|-----|
| 1. civil proceedings;    | 75% |
| 2. criminal proceedings. | 25% |

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried eight cases, and five of the cases were to a jury. All but one (a mistrial) resulted in a judgment or verdict. I was sole counsel three times (including two nonjury cases); chief counsel four times (including one non-jury case), and associate counsel once (a jury trial). One of the nonjury cases was in federal court, one was in state court, and one was in the Alabama Court of the judiciary. All of the jury trials were in state courts.

i. What percentage of these trials were:

- |              |     |
|--------------|-----|
| 1. jury;     | 63% |
| 2. non-jury. | 37% |

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

In private practice, I filed one petition for a writ of certiorari. The petition for certiorari was denied. Allied Prods. Corp. v. Vagenas, 510 U.S. 947 (1993).

As the Attorney General of the State of Alabama, I practiced extensively before the United States Supreme Court. Although I did not file briefs in every case in which an opposing party petitioned for a writ of certiorari, I filed many merits briefs, amicus briefs, and petitions for a writ of certiorari. I have searched my records, internet databases, and my memory to compile this list of cases in which I filed briefs with the Supreme Court. Despite these efforts, this list may be incomplete.

Petitions for a Writ of Certiorari Filed by Alabama That Were Denied:

Alabama v. Bryant, 538 U.S. 906 (2003)  
Reynolds v. Roberts, 534 U.S. 1161 (2002)  
Alabama v. Sneed, 531 U.S. 1183 (2001)  
Alabama v. U.S. Dep't of Energy, 531 U.S. 924 (2000)  
Pryor v. Summit Med. Assocs., 529 U.S. 1012 (2000)  
Pryor v. Reno, 528 U.S. 1111 (2000)

Cases in which Alabama Filed Briefs in Opposition to a Grant of Certiorari and in Defense on the Merits Before the Supreme Court Ultimately Denied the Writ:

Caffey v. Alabama, 540 U.S. 1017 (2003)  
Hubbard v. Campbell, 540 U.S. 951 (2003)  
Godwin v. Moore, 539 U.S. 915 (2003)  
Fortenberry v. Haley, 538 U.S. 1053 (2003)  
Bradley v. Pryor, 538 U.S. 999 (2003)  
Buchanan v. Haley, 537 U.S. 1127 (2003)  
Burnett v. Pridmore, 537 U.S. 822 (2002)  
Hope v. Pelzer, 536 U.S. 730 (2002)

Arthur v. Alabama, 535 U.S. 1053 (2002)  
Ferguson v. Alabama, 535 U.S. 907 (2002)  
Speigner v. Alexander, 534 U.S. 1056 (2001)  
Hardy v. Alabama, 534 U.S. 1043 (2001)  
Berryhill v. Alabama, 534 U.S. 1022 (2001)  
Smith v. Alabama, 534 U.S. 872 (2001)  
Wilson v. Haley, 532 U.S. 919 (2001)  
Hardy v. Att’y Gen. of Ala., 531 U.S. 869 (2000)  
Davis v. Alabama, 525 U.S. 1149 (1999)

Cases in Which Alabama Presented Argument on the Merits to the Supreme Court  
After a Grant of a Petition for a Writ of Certiorari:

Alabama v. North Carolina, 540 U.S. 1014 (2003)  
Alabama v. Shelton, 535 U.S. 654 (2002) (argued)  
Alabama v. Bozeman, 533 U.S. 146 (2001)  
Alexander v. Sandoval, 532 U.S. 275 (2001)  
Bd. of Trs. of Univ. of Ala. v. Garrett, 531 U.S. 356 (2001)  
Sinkfield v. Kelley, 531 U.S. 28 (2000)  
Chandler v. Siegelman, 530 U.S. 1256 (2000)  
Kimel v. Fla. Bd. of Regents, 528 U.S. 62 (2000)  
South Central Bell Telephone Co. v. Alabama, 526 U.S. 160 (1999)

Cases in Which the State of Alabama Filed Amicus Briefs:

Wilkinson v. Dotson, 544 U.S. 74 (2005)  
United States v. Patane, 542 U.S. 630 (2004)  
Schriro v. Summerlin, 542 U.S. 348 (2004)  
Aetna Health Inc. v. Davila, 542 U.S. 200 (2004)  
Hibbs v. Winn, 542 U.S. 88 (2004)  
Elk Grove Unified Dist. v. Newdow, 542 U.S. 1 (2004)  
Littleton, Colo. v. Z.J. Gifts D-4, LLC, 541 U.S. 774 (2004)  
Thornton v. United States, 541 U.S. 615 (2004)  
Tennessee v. Lane, 541 U.S. 509 (2004)  
Jones v. R.R. Donnelley & Sons Co., 541 U.S. 369 (2004)  
United States v. Lara, 541 U.S. 193 (2004)  
Iowa v. Tovar, 541 U.S. 77 (2004)  
Locke v. Davey, 540 U.S. 712 (2004)  
Alaska Dep’t of Env’tl. Conservation v. EPA, 540 U.S. 461 (2004)  
Illinois v. Lidster, 540 U.S. 419 (2004)  
Verizon Commc’ns Inc. v. Law Offices of Curtis v. Trinko, LLP, 540 U.S. 398 (2004)  
Maryland v. Pringle, 540 U.S. 366 (2003)  
Lawrence v. Texas, 539 U.S. 558 (2003)  
Wiggins v. Smith, 539 U.S. 510 (2003)  
American Ins. Ass’n v. Garamendi, 539 U.S. 396 (2003)  
Grutter v. Bollinger, 539 U.S. 306 (2003)  
Overton v. Bazzetta, 539 U.S. 126 (2003)

Virginia v. Hicks, 539 U.S. 113 (2003)  
Nevada Dep't of Human Res. v. Hibbs, 538 U.S. 721 (2003)  
Inyo Cnty., Cal. v. Paiute-Shoshone Indians of the Bishop Cmty. of the Bishop Colony, 538 U.S. 701 (2003)  
Price v. Vincent, 538 U.S. 634 (2003)  
Jinks v. Richland Cnty., S.C., 538 U.S. 456 (2003)  
Ewing v. California, 538 U.S. 11 (2003)  
Connecticut Dep't of Public Safety v. Doe, 538 U.S. 1 (2003)  
Abdur'Rahman v. Bell, 537 U.S. 88 (2003)  
Zelman v. Simmons-Harris, 536 U.S. 639 (2002)  
United States v. Ruiz, 536 U.S. 622 (2002)  
Ring v. Arizona, 536 U.S. 584 (2002)  
Atkins v. Virginia, 536 U.S. 304 (2002)  
Gonzaga Univ. v. Doe, 536 U.S. 273 (2002)  
Carey v. Saffold, 536 U.S. 214 (2002)  
Fed. Mar. Comm'n v. S.C. State Ports Auth., 535 U.S. 743 (2002)  
Mathias v. WorldCom Techs., Inc., 535 U.S. 682 (2002)  
Lapides v. Bd. of Regents of Univ. Sys. of Ga., 535 U.S. 613 (2002)  
Los Angeles v. Alameda Books, Inc., 535 U.S. 425 (2002)  
Ashcroft v. Free Speech Coalition, 535 U.S. 234 (2002)  
Kansas v. Crane, 534 U.S. 407 (2002)  
Lee v. Kemna, 534 U.S. 362 (2002)  
Tyler v. Cain, 533 U.S. 656 (2001)  
Nevada v. Hicks, 533 U.S. 353 (2001)  
Saucier v. Katz, 533 U.S. 194 (2001)  
Good News Club v. Milford Central Sch., 533 U.S. 98 (2001)  
Penry v. Johnson, 532 U.S. 782 (2001)  
Booth v. Churner, 532 U.S. 731 (2001)  
Atkinson Trading Co. v. Shirley, 532 U.S. 645 (2001)  
Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Servs., 532 U.S. 598 (2001)  
C&L Enterprises, Inc. v. Citizen Band Potawatomi Indian Tribe of Okla., 532 U.S. 411 (2001)  
Lackawanna Cnty. Dist. Att'y v. Coss, 532 U.S. 394 (2001)  
Shaw v. Murphy, 532 U.S. 223 (2001)  
Texas v. Cobb, 532 U.S. 162 (2001)  
City News & Novelty, Inc. v. Waukeshu, 531 U.S. 278 (2001)  
Seling v. Young, 531 U.S. 250 (2001)  
Fiore v. White, 531 U.S. 225 (2001)  
Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Eng'rs, 531 U.S. 159 (2001).  
Bush v. Gore, 531 U.S. 98 (2000)  
Bush v. Palm Beach Cnty. Canvassing Bd., 531 U.S. 70 (2000)  
Indianapolis v. Edmond, 531 U.S. 32 (2000)  
Stenberg v. Carhart, 530 U.S. 914 (2000)  
Dickerson v. United States, 530 U.S. 428 (2000)

Miller v. French, 530 U.S. 327 (2000)  
Santa Fe Indep. Sch. Dist. v. Doe, 530 U.S. 290 (2000)  
Vt. Agency of Natural Res. v. United States ex rel. Stevens, 529 U.S. 765 (2000)  
United States v. Morrison, 529 U.S. 598 (2000)  
Slack v. McDaniel, 529 U.S. 473 (2000)  
Edwards v. Carpenter, 529 U.S. 446 (2000)  
Williams v. Taylor, 529 U.S. 420 (2000)  
Williams v. Taylor, 529 U.S. 362 (2000)  
Norfolk S. Ry. Co. v. Shanklin, 529 U.S. 344 (2000)  
Florida v. J.L., 529 U.S. 266 (2000)  
Rice v. Cayetano, 528 U.S. 495 (2000)  
Smith v. Robbins, 528 U.S. 259 (2000)  
Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc., 528 U.S. 167 (2000)  
Reno v. Condon, 528 U.S. 141 (2000)  
Illinois v. Wardlow, 528 U.S. 119 (2000)  
Alden v. Maine, 527 U.S. 706 (1999)  
Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd., 527 U.S. 666 (1999)  
Martin v. Hadix, 527 U.S. 343 (1999)  
Chicago v. Morales, 527 U.S. 41 (1999)  
Saenz v. Roe, 526 U.S. 489 (1999)  
UNUM Life Ins. Co. of Am. v. Ward, 526 U.S. 358 (1999)  
Wyoming v. Houghton, 526 U.S. 295 (1999)  
West Covina v. Perkins, 525 U.S. 234 (1999)  
Wisconsin Dep't of Corr. v. Schacht, 524 U.S. 381 (1998)  
Hohn v. United States, 524 U.S. 236 (1998)  
Pa. Dep't of Corr. v. Yeskey, 524 U.S. 206 (1998)  
Cass Cnty., Minn. v. Leech Lake Band of Chippewa Indians, 524 U.S. 103 (1998)  
Calderon v. Ashmus, 523 U.S. 740 (1998)  
Montana v. Crow Tribe of Indians, 523 U.S. 696 (1998)  
Ark. Educ. Television Comm'n v. Forbes, 523 U.S. 666 (1998)  
Stewart v. Martinez-Villareal, 523 U.S. 637 (1998)  
Crawford-El v. Britton, 523 U.S. 574 (1998)  
United States v. Scheffer, 523 U.S. 303 (1998)  
Ohio Adult Parole Auth. v. Woodard, 523 U.S. 272 (1998)  
United States v. Ramirez, 523 U.S. 65 (1998)  
Alaska v. Native Village of Venetie Tribal Gov't, 522 U.S. 520 (1998)  
South Dakota v. Yankton Sioux Tribe, 522 U.S. 329 (1998)  
Kalina v. Fletcher, 522 U.S. 118 (1997)  
Hudson v. United States, 522 U.S. 93 (1997)

15. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe



in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *Roe v. State of Alabama*, 68 F.3d 404 (11th Cir. 1995)

The November 1994 general election led to lawsuits in both state and federal courts in Alabama about whether a group of contested absentee ballots should be counted. Alabama law requires that absentee ballots contain the voter's signature, notarized or witnessed by two persons who are at least 18 years of age. Code of Ala., tit. 17, chap. 10 (1975). Between 1,000 and 2,000 voters in the 1994 election did not comply with the notarization or witness requirements. In accordance with the statutory text and the statewide practice before the election, the voters' ballots were not counted in the initial tally. Instead, the ballots were removed from their affidavit envelopes and not placed in the ballot box.

The elections for chief justice and treasurer were so close that the contested absentee ballots could decide the victors. Two absentee voters filed suit in the Circuit Court for Montgomery County and sought an order that the contested absentee ballots be counted. *Odom v. Bennett*, No. 94-2434-R. On November 17, 1994, the circuit court entered such an order. The court further ordered the Secretary of State not to certify election totals until the vote totals contained the contested absentee ballots.

Three voters—including the Republican candidate for Chief Justice and the Republican candidate for Secretary of State—filed an action under 42 U.S.C. § 1983 in the U.S. District Court for the Southern District of Alabama to block the counting of the contested absentee ballots. On December 5, 1994, U.S. District Judge Alex Howard entered a preliminary injunction against the Secretary of State and county election officials that precluded them from complying with the state court's order. Judge Howard found that "past practice of Alabama election officials . . . has been to refrain from counting any absentee ballot that did not include notarization or the signatures of two qualified witnesses," and that "the past practice of the Secretary of [the] State of Alabama has been to certify election results on the basis of vote counts that included absentee votes cast only by those voters who included affidavits with either notarization or the signature of two qualified witnesses." See 43 F.3d at 579 (quoting an unpublished district court order). Judge Howard also concluded that the order of the state circuit judge would change this past practice, and that if state election officials obeyed the order, they would violate the Fourteenth Amendment.

The State of Alabama and various county election officials, represented by then-Attorney General Jimmy Evans, appealed Judge Howard's order. In a *per curiam* opinion announced on January 4, 1995, the U.S. Court of Appeals for the Eleventh Circuit held that the district court had subject matter jurisdiction over the case and that the plaintiffs had demonstrated a violation of a right secured by the Constitution as required for a section 1983 claim. The court certified the question whether the contested ballots met the requirements of state law to the Supreme Court of Alabama. 43 F.3d 574 (11th Cir. 1995) (Circuit Judges Tjoflat, Edmondson, Birch).

I began my work on this matter shortly after Jeff Sessions was sworn in as Attorney General of Alabama on January 20, 1995. I represented the State and James Bennett, in his official capacity as Secretary of State for the State of Alabama, before the Circuit Court of Montgomery County, the U.S. District Court for the Southern District of Alabama, and the U.S. Court of Appeals for the Eleventh Circuit.

On March 14, 1995, the Supreme Court of Alabama answered the certified question in the affirmative. The court held that the contested ballots were in "substantial compliance" with the election laws and were to be opened and counted. 676 So. 2d 1206 (Ala. 1995). On receipt of this answer, the Eleventh Circuit on April 26, 1995, remanded the case to the Southern District of Alabama for a trial on the merits, with instructions. 52 F.3d 300 (11th Cir. 1995) (Circuit Judges Tjoflat, Edmondson, Birch), *cert. denied*, 516 U.S. 908 (1995).

After a bench trial, on September 29, 1995, the district court held that the past practice of the State was clearly not to count absentee ballots that had been neither notarized nor witnessed, that to change this practice would deprive the plaintiffs of their rights to due process and equal protection, and that the voters whose ballots did not meet the statutory requirements had failed to show that their constitutional rights were violated. The district court permanently enjoined the counting of any contested absentee ballots and directed the Secretary of State to certify the election results and swear in successful candidates. 904 F. Supp. 1315 (S.D. Ala. 1995). The class consisting of voters who had cast defective absentee ballots appealed the order of the district court.

I wrote the brief and argued the case before the Court of Appeals. The Eleventh Circuit affirmed and directed the State officials to comply with the injunction. 68 F.3d 404 (11th Cir. 1995) (Circuit Judges Tjoflat, Anderson, and Barkett).

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2. *White v. Alabama*, 74 F.3d 1058 (11th Cir. 1996)

In this case, I represented the State of Alabama and its then-Secretary of State, Jim Bennett, after Jeff Sessions was sworn in as Attorney General of Alabama (in January 1995), and was appointed Deputy Attorney General.

Before the 1994 elections, White, on behalf of himself and African-American voters in Alabama, filed suit under the Voting Rights Act, challenging the at-large system for the election of judges to Alabama appellate courts. White brought claims under Sections 2 and 5 of the Act and triggered the appointment of a three-judge court. But the jurisdiction of that three-judge court did not include all of the proceedings. *See* 74 F.3d at 1065 n. 25 (citing *White v. State of Alabama*, 851 F. Supp. 427, 428–29 (M.D. Ala. 1994) (three-judge court)). Specifically, the three-judge court concluded that it “did not have the jurisdiction to consider the validity of [a] settlement agreement.” *Id.* In February 1994, White and the State of Alabama reached a settlement. Jimmy Evans was then the Attorney General of Alabama. Ralph Bradford and others sought to intervene to seek different relief.

The settlement that was reached in February 1994 was modified more than once before it was approved by the district court on October 6, 1994. As approved, the effect of the agreement would have been to retain the State’s system of electing appellate judges on an at-large basis, but to create two additional judgeships on each court. The increase to seven members would be permanent on the Alabama Court of Civil Appeals and the Court of Criminal Appeals, and the Alabama Supreme Court would ultimately be settled at nine members. A judicial nominating commission, the composition of which was specified, would present a slate of three candidates to the Governor. Those candidates were to be drawn from the White plaintiff class of African-American voters. Moreover, the settlement provided a mechanism that would insure that the two new seats were continually occupied by African-Americans. *See generally White v. State of Alabama*, 867 F. Supp. 1519 (M.D. Ala. 1994). Through these changes, African-Americans, who were then some 23 percent of the voting age population, would be proportionately represented on the Alabama appellate bench.

Before the 1994 election, the district court approved the proposed settlement and rejected the objections to it. The intervenors who had objected appealed from the judgment.

After I became Deputy Attorney General, I was the only attorney representing the State of Alabama and Secretary of State Bennett. In these proceedings, I briefed and argued the matter in the Eleventh Circuit. I challenged the settlement approved by the district court on three principal grounds: 1) that the settlement was contrary to the constitution of Alabama and, therefore, it was beyond the authority of the Attorney General of Alabama; 2) that it was beyond the power of the district court under the Voting Rights Act, because it involved a remedy (appointment of judges and a change in the size of a government

body) neither contemplated by nor consistent with the Act; and 3) that it involved racial set-asides that violated the equal protection guarantees of the Fifth and Fourteenth Amendments.

In a decision published on January 6, 1996, the Eleventh Circuit vacated the judgment and remanded the case. The court adopted the arguments that other attorneys and I made and held that the remedy of the district court, which removed judicial selection from the ballot box and placed it in an appointive system, was inconsistent with Section 2 of the Voting Rights Act, which is designed to protect the opportunity to elect candidates of the voters' choice. The court also observed that proportional representation is inconsistent with the Act, which states, in pertinent part, "[N]othing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population," 74 F.3d at 1071 (quoting 42 U.S.C. § 1973(b)). Finally, the court held that the district court exceeded its powers when it increased the size of Alabama's elected appellate courts. Accordingly, the court vacated the judgment of the district court and remanded the case to the three-judge court which had stayed its hand. [Chief Judge Tjoflat, Judges Black and Goodwin (sitting by designation from the Ninth Circuit)]

In the proceedings on remand, the three-judge court, which had jurisdiction of the Section 5 claims, concluded that, although those claims were not moot, no relief was appropriate. *White v. State of Alabama*, 922 F. Supp. 552 (M.D. Ala. 1996) (three-judge court). With the resolution of the Section 5 claims, the single-judge court adjudicated the remaining claims. I participated in these proceedings in the district court. Those further proceedings are reported or can be found at 922 F. Supp. 552 (M.D. Ala.); 1996 WL 378235 (M.D. Ala. June 20, 1996); and 1998 WL 117896 (M.D. Ala.). [Circuit Judge Dubina, District Judges Thompson and DeMent]

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3. *Hornsby v. Sessions*, 703 So. 2d 932 (Ala. 1997)

This litigation also arose out of the disputed 1994 chief justice election, described in detail in the entry for *Roe v. Alabama*. The then-incumbent Chief Justice of Alabama, E.C. "Sonny" Hornsby, was a candidate for re-election. The outcome of that election was disputed, with the result that no winner was certified for several months. In the interim, Hornsby sought to continue in his office and to receive his salary during that time. In January 1995, the State Finance Director Jimmy Baker requested a legal opinion from the attorney general as to whether the state comptroller could legally issue state warrants to

pay Hornsby's salary (as well as the salary of another state official whose race had not been certified).

On February 1, 1995, Attorney General Sessions issued his opinion that Hornsby's term of office had expired and that the state comptroller could not legally issue warrants to pay his salary. Hornsby then sought a declaratory judgment that his term of office continued until the results of the election were certified.

During the pendency of this litigation, on October 20, 1995, Perry O. Hooper, Sr., was certified the winner of the race for chief justice and sworn into office as a result of the *Roe* litigation. The circuit court then dismissed Hornsby's action as moot. Hornsby appealed.

During the period from February 1995 to September 1997, I represented Jeff Sessions, as Attorney General of the State of Alabama, and Jimmy H. Baker, as Acting Director of the Department of Finance of the State of Alabama. I represented the State in proceedings before the circuit court, supervised the briefing of the appeal, and argued the case to a special court composed of retired circuit judges. Because the Chief Justice and all of the Associate Justices had recused themselves, the court had appointed a special panel composed of Circuit Judges Karrh, Younger, Burney, Baird, Folsom, Pearson, Baldwin, Key, and Byrd.

The court ruled 7 to 2 in favor of Hornsby. The court found that Hornsby had served in a *de jure* capacity as chief justice from the time his elective term ended until Hooper was sworn into office and was entitled to all the powers, rights, duties, and benefits of the office during that period.

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4. *Alabama v. Blackmon et al.*, Case No. CC-98-629, Circuit Court of Houston County, Alabama (20th Judicial Circuit)

This case was a criminal prosecution for theft from the Southeast Alabama Medical Center, a public hospital in Dothan, Alabama. Blackmon was the former Chief Executive Officer of the hospital and Lupinacci was the Director of the Industrial Medicine Clinic at the hospital. They were indicted on June 4, 1998. Blackmon was indicted for five counts of theft of property in the first degree. Each count represented a separate scheme to embezzle from the public hospital where he was employed as the Chief Executive Officer. Lupinacci was indicted as an accomplice in one of the schemes.

I was lead counsel for the State of Alabama. I examined witnesses and made arguments to both the judge and jury. Judge Charles W. Woodham, a district court judge from Henry County, the other county in the 20th Judicial Circuit, was appointed to hear this case after the circuit judges recused themselves.

Blackmon was convicted on four of five counts on March 18, 1999. On April 19, 1999, he was sentenced on each count to 15 years, which was split to a sentence of 3 years imprisonment followed by 5 years probation. These sentences were to run concurrently. Blackmon was ordered to make restitution in the total amount of \$376,345.83. Lupinacci was acquitted, but later pleaded guilty to another felony theft charge.

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5. *Ex Parte James*, 2002 WL 1150823 (Ala. 2002)

This case, which raised constitutional challenges to the funding of public education by the State of Alabama, was litigated for approximately 12 years. My involvement included representing state officials in various courts after my employment with the Office of Attorney General in January 1995. In this summary, I focus on my representation of state officials in appellate litigation before the Alabama Supreme Court during 2001 and 2002.

The story began in 1990 and 1991 with the filing of two lawsuits that challenged the funding and adequacy of Alabama public schools. In a sweeping “Liability Order” entered in the two consolidated cases, the Circuit Court of Montgomery County found that the public schools of Alabama were constitutionally inadequate. The parties jointly moved the trial court for certification of the Liability Order as a final judgment. *Ex parte James*, 713 So. 2d at 875 (citing *Pinto v. Alabama Coalition for Equity*, 662 So. 2d 894 (Ala. 1995)) (*James I*). On June 9, 1993, two months after it entered the Liability Order, the circuit court certified the judgment as final under Rule 54(b), Ala. R. Civ. P. *James v. Alabama Coalition for Equity, Inc.*, 713 So. 2d 937, 940 (Ala. 1997). None of the parties contested or appealed the issuance of the Rule 54(b) order that made the Liability Order final. *Id.* at 941. On four occasions after the Rule 54(b) order was issued, the Alabama Supreme Court held that the Liability Order became final and appealable as of June 9, 1993. *See id.* at 943.

In *James I*, the Supreme Court of Alabama stayed any “remedy” proceedings for a period of one year so that the educational deficiencies identified in the Liability Order could be addressed by the legislative and executive branches of government. 713 So. 2d at 882. Later, the Supreme Court of Alabama modified its ruling to provide the coordinate branches of government a “reasonable time” to “formulate[] an educational system that complies with the judgment in the Liability Phase.” 713 So. 2d at 935. After that ruling, the legislature enacted new laws to improve the public education system in Alabama and the State Board of Education worked tirelessly to implement new policies and initiatives to improve the quality of education afforded Alabama schoolchildren.

On March 16, 2001, despite these efforts, the plaintiffs filed a petition with the circuit court to reopen the litigation for “remedy” proceedings. The circuit court scheduled a status conference for May 9, 2001. On June 29, 2001, the Supreme Court of Alabama entered an order *ex mero motu* that vacated the previous order in which it had remanded the proceedings to the circuit court and that required the parties to brief issues about the appealability of the Liability Order.

In our briefs, we reminded the court of its previous holdings that the Liability Order was final and binding on the defendants. We urged the court not to disturb the finality of its previous holdings and, instead, to hold that the implementation of a remedy for funding

elementary and secondary education systems presented a nonjusticiable political question better left to the executive and legislative branches of government. We argued that subsequent legislation and efforts of the State Department of Education had brought about changes in education funding and adequacy that had rendered the litigation moot. We asked the court to exercise judicial restraint and refrain from usurping the powers of the other branches of government.

I served as lead counsel for the state defendants, including the Governor, State Director of Finance, Lieutenant Governor, Speaker of the House of Representatives, State Superintendent of Education, and the members of the Alabama State Board of Education. I wrote the master outline for and some sections of our briefs and served as final editor for all briefs submitted on behalf of the state defendants. The court agreed with our arguments regarding justiciability and the separation of powers and dismissed the remedy phase of the litigation. [Chief Justice Moore; Justices See, Brown, Harwood, Stuart, Houston, Woodall, Johnstone, and Lyons]

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6. *Alabama v. Shelton*, 535 U.S. 654, 122 S. Ct. 1764 (2002)

This case raised the question of a misdemeanor's right to counsel for the imposition of a suspended sentence of imprisonment. After Shelton was adjudged guilty of third degree assault, a misdemeanor offense, while representing himself in the Etowah County District Court of Alabama, Shelton appealed the conviction for a trial de novo in circuit court. Shelton proceeded, pro se, to trial in the Etowah County Circuit Court, where a jury convicted him of the same crime. The trial judge sentenced Shelton to serve thirty days in the Etowah County Detention Center, then suspended the term and imposed two years' unsupervised probation. As a condition of probation, Shelton was required to pay various financial levies to the county clerk within thirty days.

Shelton retained counsel and appealed his conviction. Shelton argued in the Alabama Court of Criminal Appeals that his misdemeanor conviction was void because he had not waived his right to counsel. The Alabama Court of Criminal Appeals disagreed and held, based on the rulings in *Argersinger v. Hamlin*, 407 U.S. 25 (1972), and *Scott v. Illinois*, 440 U.S. 367 (1979), that a defendant is not entitled to counsel for a misdemeanor offense in which a suspended or conditional sentence is imposed. In a 6 to 1 decision, the Alabama Supreme Court affirmed Shelton's conviction and "[t]he remaining aspects of the sentence," but "revers[ed] that aspect of his sentence imposing thirty days of suspended jail time." Finding that "[n]either *Argersinger* nor *Scott* addressed the issue . . . whether a suspended or probated sentence to imprisonment constitutes a 'term of imprisonment,'" the Alabama Supreme Court concluded that a conditional threat of imprisonment imposed in an uncounseled case "could never be carried out" and thus was "invalid" as a matter of federal constitutional law.

The Supreme Court of the United States granted a writ of certiorari to consider the State's argument that, under the Sixth Amendment and the decisions in *Argersinger* and *Scott*, the right to state-appointed counsel extended only to cases involving actual incarceration.

I represented the State of Alabama by overseeing and participating in the brief writing and presenting the oral argument before the United States Supreme Court on February 19, 2002. The Supreme Court affirmed the ruling of the Alabama Supreme Court by a 5 to 4 vote.

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7. *Ex parte Bobby Wayne Waldrop*, 2002 WL 31630710 (Ala. Nov. 22, 2002)

Waldrop was convicted of three counts of capital murder in the stabbing of his grandparents. Two counts of murder were made capital because the murders were committed during a robbery; one count of murder was made capital because two or more persons were murdered by one act or pursuant to one scheme or course of conduct.

The Alabama Supreme Court originally granted certiorari review on one issue—whether the trial court stated sufficient reasons in its sentencing order for overriding the jury’s life recommendation and sentencing Waldrop to death under *Ex parte Taylor*, 808 So. 2d 1215 (Ala. 2001). After the decision in *Ring v. Arizona*, 536 U.S. 584, 122 S. Ct. 2428 (2002), the Supreme Court of Alabama ordered supplemental briefing on five issues concerning the possible effects of *Ring* on the capital sentencing regime in Alabama.

I monitored closely the brief writing, which was supervised by the Solicitor General and Division Chief, on the *Ring* issues, and I orally argued the case before the Alabama Supreme Court on September 10, 2002. The case was affirmed unanimously as to the *Ring* issue and 5 to 4 as to the *Ex Parte Taylor* issue.

Although the court did not adopt my first argument that finding a defendant guilty of any of the 18 enumerated capital offenses satisfies *Ring* and renders the defendant death-eligible, the court agreed with my alternative argument that finding Waldrop guilty of a category of capital murder that corresponds to an aggravating circumstance (in this case robbery) rendered him death-eligible under *Ring* and entitled the trial court to sentence him to death or to life without parole. One Justice, Lyn Stuart, wrote a concurring opinion that agreed with my first argument as well. The court held that, in this case, “the jury, and not the trial judge, determined the existence of the ‘aggravating circumstance necessary for the imposition of the death penalty’ . . . . Therefore, the findings reflected in the jury’s verdict alone exposed Waldrop to a range of punishment that had as its maximum the death penalty. This is all *Ring* and *Apprendi* require.” *Ex parte Waldrop*, 2002 WL 31630710 at \*5. The court further accepted my argument that the weighing of aggravating and mitigating circumstances is not a factual determination or an element of the offense that must be made or found by the jury. The court also accepted my argument that *Ring* and *Apprendi* do not require the jury to make every factual determination; thus, the later determination by the trial court that the murders were especially heinous, atrocious, or cruel is a factor that had “application only in weighing the mitigating circumstances and the aggravating circumstances, a process that we held earlier is not an ‘element’ of the offense.” *Ex parte Waldrop*, 2002 WL 31630710 at \*7.

As to the issue on which certiorari review was initially granted, the court accepted my argument and, instead of remanding the cause to the trial court for it to state specific reasons for overriding the jury’s life recommendation, conducted its own statutorily

required review of the propriety of the death penalty. The court concluded, as I had argued, that a death sentence was proper in this case. Although the trial court's sentencing order did not comply with *Ex parte Taylor*, a case I suggested was wrongly decided, the trial judge presiding over Waldrop's trial was no longer a sitting judge. Four justices dissented from the majority's holding on this issue and argued that the case should nonetheless be remanded to the trial court.

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8. *Ex parte Roy Edward Perkins*, 2002 WL 31630711 (Ala. Nov. 22, 2002)

On June 28, 2002, the United States Supreme Court granted certiorari and remanded this capital murder case involving kidnapping and murder to the Supreme Court of Alabama “for further consideration in light of *Atkins v. Virginia*.” *Perkins v. Alabama*, 122 S. Ct. 2653 92002). The Supreme Court of Alabama then ordered supplemental briefing to address the possible implications of *Atkins v. Virginia* on this case. The ultimate question was whether Perkins was mentally retarded within the meaning of the Eighth Amendment and, therefore, not subject to the death penalty.

I argued the case before the Alabama Supreme Court on November 6, 2002. My principal argument was that Perkins was not entitled to relief. In the alternative, I sought remand for an *Atkins* hearing. I encouraged the Court not to establish a mental retardation standard and argued that, regardless of the standard used to evaluate Perkins’s mental function, the overwhelming evidence from the trial conclusively demonstrated that Perkins was not mentally retarded within the meaning of the Eighth Amendment. This argument was successful.

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9. *Blanton v. State*, 886 So. 2d 850 (Ala. Civ. App. 2003)

This case arose out of the prosecution of Blanton for the 1963 bombing of the Sixteenth Street Baptist Church that resulted in the death of four young black girls. 886 So. 2d at 857. At trial, Blanton was convicted of four counts of first-degree murder and sentenced to life imprisonment on each count. *See id.*

Blanton appealed his convictions to the Court of Criminal Appeals of Alabama. On appeal, he raised several challenges to the admission of evidence under the Alabama Rules of Evidence and the Fourth Amendment. He also argued that the denial of a continuance by the trial court violated his right to counsel under the Sixth Amendment; that the State used race-based considerations in its exercise of peremptory strikes in violation of his due process rights; that the trial court improperly denied his challenges for cause; that the trial court erred in its jury instruction on conspiracy; that the trial court erroneously denied his motion for a change of venue; and that the trial court should have granted his motion to dismiss because the prosecution waited 37 years to indict him for the bombing.

I supervised the briefing and presented oral argument to the Court of Criminal Appeals of Alabama. I argued that Blanton's evidentiary challenges lacked merit or were procedurally defaulted; that Blanton had failed to demonstrate any violation of his Sixth Amendment right to counsel because he had not cited any specific instances in which his counsel's performance was deficient; that the State properly exercised its peremptory strikes for race-neutral reasons; that the trial court did not abuse its discretion in its voir dire rulings; that Blanton failed to preserve his challenge to the jury instructions; that Blanton failed to show either that the pretrial publicity warranted a presumption of prejudice or that the jury was actually prejudiced against him because of that publicity; and that Blanton had not presented any evidence that he was actually prejudiced by the pre-indictment delay and that the delay was the product of some deliberate action by the State.

The Court of Criminal Appeals accepted my arguments and affirmed the judgment of the trial court. [Judges Baschab, McMillan, Shaw, Wise, Cobb]. Both the Alabama Supreme Court and the United States Supreme Court denied certiorari to Blanton. *Blanton v. Alabama*, 543 U.S. 878, 125 S. Ct. 119 (2004); *Ex parte Blanton*, 886 So. 2d 886 (Ala. 2004).

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10. *Moore v. Judicial Inquiry Comm'n of State of Ala.*, 891 So. 2d 848 (Ala. 2004)

Shortly after he was elected Chief Justice of the Alabama Supreme Court, Roy Moore commissioned a granite monument that depicted the Ten Commandments and installed it in the rotunda of the judicial building in Montgomery. When Chief Justice Moore unveiled the monument, he said that the monument depicted the moral foundation of the law and would serve as a reminder to the judges, courts, members of the bar, and citizens

of Alabama that “to establish justice we must involve ‘the favor and guidance of almighty God.’” 891 So. 2d at 852.

Two lawsuits were filed to challenge the monument, and United States District Judge Myron Thompson concluded that Chief Justice Moore had violated the Establishment Clause when he had installed the monument and ordered him to remove it within 30 days. The district court did not initially issue an injunction, but stated that it would enter an injunction to require its removal within 15 days if he failed to remove the monument within 30 days. Chief Justice Moore refused to remove the monument and appealed the decision to the United States Court of Appeals for the Eleventh Circuit. The district court entered the permanent injunction, but agreed to stay the injunction during the pendency of Chief Justice Moore’s appeal. The Eleventh Circuit affirmed the entry of the permanent injunction by the district court and issued its mandate. The district court issued a mandatory injunction that required the removal of the monument within 15 days.

Chief Justice Moore did not appeal within the statutory time limit and issued a public statement in which he said that he had “no intention of removing the monument.” He then asked the district court to stay the injunction while he petitioned for a writ of mandamus in the United States Supreme Court. The district court denied the stay because Chief Justice Moore had refused to file a petition for a writ of certiorari to the United States Supreme Court and “should not be able to circumvent, or avoid, the Eleventh Circuit and keep that appellate court out of the orderly appellate process.” 891 So. 2d at 853. He then filed a motion in the Eleventh Circuit to recall the mandate and stay the injunction, and the Eleventh Circuit denied that motion. He also filed an application for recall and stay with the United States Supreme Court that the Court denied that same day.

When Chief Justice Moore refused to comply with the injunction by the August 20, 2003 deadline, the Associate Justices of the Alabama Supreme Court issued an order to remove the monument.

On August 22, 2003, the Judicial Inquiry Commission filed a complaint against Chief Justice Moore for violations of the Alabama Canons of Judicial Ethics. Specifically, he was charged with a violation of Canon 1, which requires a judge to “participate in establishing, maintaining, and enforcing, and [to] himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved”; a violation of Canon 2A, which requires “[a] judge [to] respect and comply with the law” and Canon 2B which requires “[a] judge [to] at all times maintain the decorum and temperance befitting his office.” 891 So. 2d at 854.

The Court of Judiciary issued a unanimous opinion “holding that Chief Justice Moore had violated the Canons of Judicial Ethics as charged in the complaint” and ordered Chief Justice Moore to be removed from office. *Id.* at 854.

The Supreme Court of Alabama affirmed. Because all of the members of the Alabama Supreme Court recused themselves, the Court authorized the Governor and acting Chief

Justice to convene a Court composed of seven retired justices and judges selected at random from a pool of twenty. *Id.* at 850 n.1.

The United States Supreme Court denied a writ of certiorari. *Moore v. Judicial Inquiry Comm'n of State of Ala.*, 543 U.S. 875, 125 S. Ct. 103 (2004).

I argued the case against Chief Justice Moore in the Court of the Judiciary, but was not involved in the appeal to the Supreme Court of Alabama after my appointment to the United States Court of Appeals for the Eleventh Circuit.

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16. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

Aside from the litigation matters mentioned above in answer to question 15, I have been involved in two kinds of significant legal activities: (1) the development of constitutional amendments, legislation, and changes in court rules; and (2) the provision of legal opinions to various public officials.

*Constitutional amendments, legislation, and changes in court rules.* In 1998, I helped draft and campaign for the passage of the Religious Freedom Amendment to the Constitution of Alabama. See ALA. CONST. amend. 622. This amendment was precipitated by two decisions of the Supreme Court of the United States: *Employment Division v Smith*, 494 U.S. 872 (1990), which relaxed the scrutiny of government burdens of religious freedom under the First Amendment; and (2) *City of Boerne v. Flores*, 521 U.S. 507 (1997), which declared the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb, unconstitutional as applied to the states. I opposed efforts of Alabama prison officials to create an exemption under the Religious Freedom Amendment. Under this amendment, government officials in Alabama cannot burden the religious freedom of individuals unless the burden is in furtherance of a compelling government interest and is the least restrictive means of furthering that compelling government interest.

In 1998, I successfully proposed that the State Board of Health classify the drug gamma hydroxybutyrate (GHB) as a schedule I controlled substance. GHB is a dangerous drug often used in date rapes. The classification of GHB as a schedule I drug made its manufacture, possession, and use illegal in Alabama.

Beginning in 1998, I led an effort to reform the system of criminal sentencing in Alabama courts. In 1998, I worked with then-Chief Justice Perry Hooper, Sr., to appoint a committee of the Alabama Judicial System Study Commission to review sentencing policies and practices. After that committee recommended the creation of a permanent sentencing commission to develop and recommend new sentencing policies, my office drafted and successfully lobbied for the passage of legislation that created that commission. Ala. Code § 12-25-1 et seq. Until my appointment as a judge, I remained active in the work of that commission to reform the Alabama system of criminal sentencing in the following ways: (1) to ensure that sentencing practices promote public safety and recognize the impact of crime on victims by concentrating on the incarceration of violent, sex, and repeat offenders; (2) to maintain meaningful judicial discretion allowing judges the flexibility to individualize sentences based on the unique

circumstances of each case; (3) to establish a system where the time served in prison will bear a close resemblance to the court imposed sentence; (4) to provide for sentencing alternatives, other than incarceration in prison, for offenders who can best be supervised and rehabilitated through more cost-effective means while still protecting the public; (5) to assist the executive branch in avoiding prison overcrowding and premature release of inmates; and (6) to ensure that there exists no unwarranted disparity with respect to sentencing of felony offenders.

In 1999 and 2000, I helped draft and campaigned for an amendment to the Constitution of Alabama that repealed a ban on interracial marriages. *See* ALA. CONST. amend. No. 667 (repealing former article IV, section 102).

In 2000, I proposed and the Supreme Court of Alabama unanimously adopted an amendment to Alabama Rule of Appellate Procedure 39. The amendment removed the provision of former Rule 39 that provided that a petition for a writ of certiorari to the Supreme Court of Alabama in a case involving a sentence of death would be granted as of right. Under the new rule, the review of cases involving sentences of death is at the discretion of the Supreme Court of Alabama, like every other criminal case.

In 2001, I successfully proposed legislation to create a crime of identity theft and certain remedies for victims of that crime. Ala. Code. §§ 13A-8-190 et seq.

*Opinions for public officials.* I have provided hundreds of opinions and guidance on legal issues to scores of public officials in Alabama. At least three of those opinions and one set of guidelines are noteworthy.

- (1) On three separate occasions, I distributed to all city and county superintendents of education extensive guidelines for the free exercise of religion in public schools. These guidelines are similar to the guidelines distributed by the U.S. Department of Education. The guidelines explain that school officials are prohibited from sponsoring or organizing prayer or religious activities. The guidelines also explain how school officials must remain genuinely neutral toward student-initiated religious expression.
- (2) After the 2002 general election, a dispute erupted between the gubernatorial candidates concerning the circumstances that would warrant a recount under Alabama's archaic and confusing election laws, many of which were written long before the use of modern voting machines became common. At the request of the Secretary of State, I opined that a recount was unavailable except in limited circumstances.
- (3) In early 2000, a state legislator sought my opinion whether the Vermont "civil union" statute then pending (and later passed) that gave homosexual couples the benefit of marriage would be afforded "full faith and credit" by the State of Alabama, its political subdivisions, and business enterprises. After an exhaustive review of the relevant controlling constitutional authorities and Alabama law, I concluded that neither the State, its subdivisions, businesses doing business in the state, nor our citizens would be required to recognize civil unions of homosexual

couples under the federal Defense of Marriage Act and the Alabama Marriage Protection Act.

- (4) In June 2002, the director of the State Personnel Department sought my opinion concerning special rights and privileges allegedly granted to state employees who are members of the National Guard and Reserves forces of the United States when called to active duty during the war on terrorism that commenced in September 2001. Among these benefits, the State undertook to pay the difference between a service member's military pay and his/her civilian pay, if any. Some department heads had suggested to the personnel director that giving effect to the statute would allow service members to "double dip" and be paid benefits to which they were not entitled and state agencies could not afford to pay. In my opinion, I harmonized the new state law, admittedly not a model of clarity, with the complex federal laws and regulations dealing with military pay and entitlements. In so doing, I gave great weight to the obvious intent of the legislature to recognize the sacrifices and hardships voluntarily undertaken by members of our reserve armed forces and their families. Accordingly, I opined that the legislature intended to ensure that service members and their families did not suffer additional financial sacrifices for defending our Nation.

17. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

Interpretation of Legal Texts (2013 – present)  
Cumberland School of Law, Samford University

This seminar introduces students to the semantic, contextual, and substantive canons of interpretation analyzed by Bryan Garner and Justice Antonin Scalia in their recent work, "Reading Law: The Interpretation of Legal Text." The goal of the seminar is to provide the students an advanced understanding of the method of judicial interpretation known as textualism. Syllabus provided.

Federal Jurisdiction (2006 – present)  
University of Alabama School of Law

This course is an introduction to the federal judicial system. We cover statutory and constitutional limits on the exercise of the federal judicial power including the justiciability doctrines, diversity and federal-question jurisdiction, congressional allocation of judicial power to legislative courts, and sovereign immunity. We also cover some aspects of the law applicable in federal courts, including *Erie*, federal common law, and collateral attack by habeas corpus. Syllabus provided.

Admiralty Law (1989 – 1995)  
Cumberland School of Law, Samford University

This course surveyed the admiralty and maritime law of the United States. We considered subjects such as admiralty and maritime jurisdiction, maritime torts, maritime contracts, the Jones Act, and seaman's rights. No syllabus available.

18. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

19. **Outside Commitments During Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service? If so, explain.

During my service on the Commission, I would continue to serve as a United States Circuit Judge for the Eleventh Circuit and as a visiting professor at the University of Alabama School of Law and an adjunct professor at Cumberland School of Law. I have no plans to pursue employment outside of these commitments.

20. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

21. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

22. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

None.



- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I do not expect any conflicts to arise in this position. I am careful to identify and avoid conflicts as a federal judge. Were any conflicts to arise in the position, I would identify and resolve them in the same way that I do in my role as a federal judge: by following the Code of Judicial Conduct.

23. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

As Attorney General and Deputy Attorney General of Alabama, my duties were to represent the State, its agencies, boards, commissions, and departments, and its officials. See Ala. Code §§ 36-15-1 et seq. These official duties, which I performed from January 1995 to February 2004, legally precluded me from representation of private clients on a pro bono basis. But my office performed a variety of services that benefit disadvantaged persons. Those services included assistance of the victims of crime and representation of the interests of consumers before the Public Service Commission and in other courts. In addition, I sponsored a mentoring initiative, Mentor Alabama, which recruited thousands of citizens from the state to serve as mentors for disadvantaged youth. I volunteered as a reading tutor at an inner-city public school for three years.

I also served as the vice chair of the Board of the Children First Foundation, a non-profit and bipartisan organization that strived to influence the policies of state government to improve the lives of children, especially disadvantaged children. I also served as a director of the Children's Scholarship Fund-Alabama, which awarded scholarships to disadvantaged students to attend private or parochial schools.

Since my appointment to the bench, the bulk of my volunteer work has been as a member of several judicial committees, the American Law Institute, and the Board of Advisory Editors for both the *Tulane Law Review* and the *Yale Law & Policy Review*. I also volunteer as a lector at Our Lady of Sorrows Catholic Church in Homewood, Alabama, and participate in the charitable works of the Equestrian Order of Holy Sepulchre of Jerusalem.

AO 10  
Rev. 1/2013

**FINANCIAL DISCLOSURE REPORT  
NOMINATION FILING**

*Report Required by the Ethics  
in Government Act of 1978  
(5 U.S.C. app. §§ 101-111)*

<b>1. Person Reporting (last name, first, middle initial)</b> Pryor, Jr., William H.	<b>2. Court or Organization</b> United States Sentencing Commission	<b>3. Date of Report</b> 04/15/2013
<b>4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)</b> Circuit Judge - Active	<b>5a. Report Type (check appropriate type)</b> <input checked="" type="checkbox"/> Nomination      Date 4/15/2013 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final <b>5b.</b> <input type="checkbox"/> Amended Report	<b>6. Reporting Period</b> 1/01/2012 to 4/01/2013
<b>7. Chambers or Office Address</b> 1729 Fifth Avenue North Suite 900 Birmingham, AL 35203		
<b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information.		

**I. POSITIONS.** (Reporting individual only; see pp. 9-13 of filing instructions.)

☐ NONE (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1. Adjunct Professor	Cumberland School of Law
2. Visiting Professor	University of Alabama School of Law
3. Director and Vice President	Alabama Center for Law & Civic Education
4.	
5.	

**II. AGREEMENTS.** (Reporting individual only; see pp. 14-16 of filing instructions.)

☒ NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1.	
2.	
3.	

**FINANCIAL DISCLOSURE REPORT**  
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Name of Person Reporting	Date of Report
Pryor, Jr., William H.	04/15/2013

**III. NON-INVESTMENT INCOME.** *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*
**A. Filer's Non-Investment Income**
☐ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2013	Cumberland School of Law	\$7,500.00
2. 2012	University of Alabama School of Law	\$17,500.00
3. 2011	University of Alabama School of Law	\$10,000.00
4.		

**B. Spouse's Non-Investment Income** *- If you were married during any portion of the reporting year, complete this section.  
(Dollar amount not required except for honoraria.)*
☐ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE
1. 2013	Warren, Averett, LLC
2. 2012	Wilson, Price, Barranco, Blankenship & Billingsley, P.C.
3.	
4.	

**IV. REIMBURSEMENTS** *- transportation, lodging, food, entertainment.  
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)*
☐ NONE *(No reportable reimbursements.)*

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1. Exempt				
2.				
3.				
4.				
5.				

**FINANCIAL DISCLOSURE REPORT**  
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<b>Name of Person Reporting</b>	<b>Date of Report</b>
Pryor, Jr., William H.	04/15/2013

**V. GIFTS.** *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*
☐ NONE *(No reportable gifts.)*

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.	Exempt		
2.			
3.			
4.			
5.			

**VI. LIABILITIES.** *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*
☒ NONE *(No reportable liabilities.)*

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE</u>	<u>CODE</u>
1.				
2.				
3.				
4.				
5.				

**FINANCIAL DISCLOSURE REPORT**  
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Name of Person Reporting	Date of Report
Pryor, Jr., William H.	04/15/2013

**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-68 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
1. IRA #1									
2. - TOCQUEVILLE GOLD FUND	B	Dividend	K	T					
3. IRA #2									
4. - JANUS OVERSEAS		None							
5. -FIDELITY SELECT MEDICAL DELIVERY	A	Dividend	J	T					
6. -FIDELITY OTC PORT		None							
7. -FIDELITY SELECT NATURAL RESOURCES		None							
8. -FIDELITY SMALL CAP DISCOVERY FUND	B	Dividend	K	T					
9. -FIDELITY SELECT BIOTECHNOLOGY	A	Dividend	K	T					
10. -PIMCO INCOME FD CL D	B	Dividend	K	T					
11. -FIDELITY BLUE CHIP GROWTH	A	Dividend	K	T					
12. IRA #3									
13. -FIDELITY REAL ESTATE INCOME	C	Dividend	L	T					
14. IRA #4									
15. -FIDELITY SELECT COMPUTERS		None							
16. -MATTHEWS ASIA SCIENCE & TECHNOLOGY FUND		None							
17. -FIDELITY SELECT MATERIALS PORTFOLIO	A	Dividend	K	T					

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 I2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000				
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	

## FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting	Date of Report
Pryor, Jr., William H.	04/15/2013

## VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-46 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
18. -FIDELITY NASDAQ COMPOSITE INDEX	A	Dividend	K	T					
19. -FIDELITY SELECT MULTIMEDIA	A	Dividend	L	T					
20. -FIDELITY SELECT BIOTECHNOLOGY	A	Dividend	K	T					
21. -FIDELITY SELECT NATURAL RESOURCES		None							
22. -FIDELITY SELECT MEDICAL DELIVERY		None							
23. -FIDELITY SELECT LEISURE	A	Dividend							
24. -FIDELITY SELECT CHEMICALS	B	Dividend	L	T					
25. IRA #7									
26. -RYDEX ENERGY INVESTOR CLASS		None							
27. -FIDELITY SELECT RETAILING	A	Dividend	K	T					
28. -FIDELITY SELECT MATERIALS PORTFOLIO	A	Dividend	K	T					
29. BROKERAGE ACCT #1									
30. -FIDELITY SELECT BIOTECHNOLOGY	A	Dividend	K	T					
31. -FIDELITY SMALL CAP VALUE		None	J	T					
32. -FIDELITY NEW MARKETS INCOME	A	Dividend							
33. -FIDELITY SELECT PHARMACEUTICAL	A	Dividend	J	T					
34. -FIDELITY SELECT LEISURE	A	Dividend							

1. Income Code:	A = \$1,000 or less	B = \$1,001 - \$2,500	C = \$2,501 - \$5,000	D = \$5,001 - \$15,000	E = \$15,001 - \$50,000
(See Columns B1 and D4)	F = \$50,001 - \$100,000	G = \$100,001 - \$1,000,000	H = \$1,000,001 - \$5,000,000	I2 = More than \$5,000,000	
2. Value Code:	J = \$15,000 or less	K = \$15,001 - \$50,000	L = \$50,001 - \$100,000	M = \$100,001 - \$250,000	
(See Columns C1 and D3)	N = \$250,001 - \$500,000	O = \$500,001 - \$1,000,000	P1 = \$1,000,001 - \$5,000,000	P2 = \$5,000,001 - \$25,000,000	
3. Value Method Code:	P3 = \$25,000,001 - \$50,000,000	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash Market
(See Column C2)	U = Book Value	Y = Other	W = Estimated		

## FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting	Date of Report
Pryor, Jr., William H.	04/15/2013

## VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-69 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code I (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
35. -MATTHEWS CHINA FUND		None							
36. -BROKERAGE ACCT #2									
37. -FIDELITY SELECT BIOTECHNOLOGY		None	J	T					
38. -FIDELITY BLUE CHIP GROWTH		None							
39. -FIDELITY SMALL CAP DISCOVERY FUND	A	Dividend							
40. -CAMBIAR AGGRESSIVE VALUE- INVESTOR		None							
41. SECTION 401(K)/PROFIT SHARING PLAN #1									
42. -MATTHEWS CHINA FUND		None							
43. -COHEN&STEERS REALTY SHARES	A	Dividend							
44. -MATTHEWS PACIFIC TIGER FUND		None							
45. -FIDELITY SELECT TRANSPORT	B	Dividend							
46. -FIDELITY SELECT ENERGY SERVICE		None							
47. -FIDELITY SELECT MULTIMEDIA		None							
48. -FIDELITY BLUE CHIP GROWTH		None							
49. -FIDELITY SELECT CHEMICAL	A	Dividend							
50. -FIDELITY CASH RESERVES	A	Interest							
51. -PIMCO COMDTY REAL RET STRAT INST	A	Dividend	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A=\$1,000 or less F=\$50,001 - \$100,000 J=\$15,001 - \$50,000 N=\$250,001 - \$500,000 P3=\$25,000,001 - \$50,000,000	B=\$1,001 - \$2,500 G=\$100,001 - \$1,000,000 K=\$15,001 - \$50,000 O=\$500,001 - \$1,000,000	C=\$2,501 - \$5,000 H1=\$1,000,001 - \$5,000,000 L=\$50,001 - \$100,000 P1=\$1,000,001 - \$5,000,000 P4=More than \$50,000,000	D=\$5,001 - \$15,000 I12=More than \$5,000,000 M=\$100,001 - \$250,000 P2=\$5,000,001 - \$25,000,000	E=\$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)					
3. Value Method Codes (See Column C2)	Q=Appraisal U=Book Value	K=Cost (Real Estate Only) V=Other	S=Assessment W=Estimated	T=Cash Market	

## FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting	Date of Report
Pryor, Jr., William H.	04/15/2013

## VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
52. -DODGE & COX INTERNATIONAL STOCK	A	Dividend	K	T					
53. -FIRST EAGLE OVERSEAS FUND CLASS I	A	Dividend	J	T					
54. -FEDERATED INSTL HIGH YLD BD INST	A	Dividend	J	T					
55. -PIMCO TOTAL RETURN INSTL	A	Dividend	J	T					
56. -VANGUARD TOTAL BD MKT IDX	A	Dividend	J	T					
57. -VANGUARD GROWTH INDEX SIGNAL	A	Dividend	J	T					
58. -AQR MANAGED FUTURES STRATEGY FUND CLASS I	A	Dividend	J	T					
59. -STEELPATH MLP ALPHA FUND CLASS I	A	Dividend	J	T					
60. -VANGUARD MIDCAP GROWTH INDEX FUND ADMIRAL	A	Dividend	K	T					
61. -VANGUARD MIDCAP VALUE INDEX FUND ADMIRAL	A	Dividend	K	T					
62. -LAZARD EMERGING MARKETS MULTI STRATEGY	A	Dividend	K	T					
63. -VANGUARD EQUITY INCOME	A	Dividend	K	T					
64. -LOOMIS SAYLES BOND INSTL	A	Dividend	J	T					
65. -PIONEER STRATEGIC INCOME A	A	Dividend	J	T					
66. -T ROWE PRICE REAL ESTATE FUND	A	Dividend	J	T					
67. -DFA US MICRO CAP	A	Dividend	J	T					
68. -VULCAN VALUE PARTNERS SMALL CAP FUND	A	Dividend	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Comb Market	
3. Value Method Codes (See Column C2)					



**FINANCIAL DISCLOSURE REPORT**  
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Name of Person Reporting	Date of Report
Pryor, Jr., William H.	04/15/2013

**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-40 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount	Type (e.g., div., rent, or int.)	Value	Value	Type (e.g., buy, sell, redemption)	Date	Value	Gain	Identity of buyer/seller (if private transaction)
	Code 1 (A-H)		Code 2 (J-P)	Method Code 3 (Q-W)	buy, sell, redemption)	mm/dd/yy	Code 2 (J-P)	Code 1 (A-H)	
69. -LEGG MASON CLEARBRIDGE SMALL	A	Dividend	J	T					
70. -WELLS FARGO STABLE VALUE		None	J	T					
71. COMPASS BANK- A/C #1	A	Interest	K	T					

**1. Income Gain Codes:**

(See Columns B1 and D4)

**2. Value Codes:**

(See Columns C1 and D3)

**3. Value Method Codes:**

(See Column C2)

A = \$1,000 or less

F = \$50,001 - \$100,000

J = \$15,000 or less

N = \$250,001 - \$500,000

P3 = \$25,000,001 - \$50,000,000

Q = Appraisal

U = Book Value

B = \$1,001 - \$2,500

G = \$100,001 - \$1,000,000

K = \$15,001 - \$50,000

O = \$300,001 - \$1,000,000

R = Other (Real Estate Only)

V = Other

C = \$2,501 - \$5,000

H1 = \$1,000,001 - \$5,000,000

L = \$50,001 - \$100,000

P1 = \$1,000,001 - \$5,000,000

P4 = More than \$50,000,000

S = Assessment

W = Estimated

D = \$5,001 - \$15,000

H2 = More than \$5,000,000

M = \$100,001 - \$250,000

P2 = \$5,000,001 - \$25,000,000

T = Cash Market

E = \$15,001 - \$50,000

**FINANCIAL DISCLOSURE REPORT**  
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Name of Person Reporting	Date of Report
Pryor, Jr., William H.	04/15/2013

**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.** *(Indicate part of report.)*

**FINANCIAL DISCLOSURE REPORT**

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Name of Person Reporting	Date of Report
Pryor, Jr., William H.	04/15/2013

**IX. CERTIFICATION.**

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: s/ William H. Pryor, Jr.

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
Suite 2-301  
One Columbus Circle, N.E.  
Washington, D.C. 20544

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		26	698	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		771	214	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			194
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – primary residence		336	361
Real estate owned – personal residence		600	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		164	193				
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		4	030				
				Total liabilities		336	361
				Net Worth	1	229	774
Total Assets	1	566	135	Total liabilities and net worth	1	566	135
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, cosigner or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

## FINANCIAL STATEMENT

## NET WORTH SCHEDULES

Listed Securities

AQR Managed Futures Strategy Fund	\$ 4,444
DFA US Micro Cap Fund	4,572
Dodge & Cox International Stock Fund	33,144
Federated Institutional High Yield Bond Fund	4,514
Fidelity Blue Chip Growth Fund	32,177
Fidelity Cash Reserves	1,039
Fidelity NASDAQ Composite Index Fund	40,538
Fidelity Real Estate Income Fund	53,882
Fidelity Select Biotechnology Fund	71,651
Fidelity Select Chemicals Fund	64,454
Fidelity Select Materials Portfolio	53,893
Fidelity Select Medical Delivery Fund	12,870
Fidelity Select Multimedia Fund	62,860
Fidelity Select Pharmaceutical Fund	14,728
Fidelity Select Retailing Fund	15,238
Fidelity Small Cap Discovery Fund	41,882
Fidelity Small Cap Value Fund	13,928
First Eagle Overseas Fund	13,547
Lazard Emerging Markets Multi-Strategy Portfolio	19,944
Legg Mason ClearBridge Small Cap Value Fund	9,178
Loomis Sayles Bond Fund	5,630
Oppenheimer Steelpath MLP Alpha Fund	4,591
PIMCO Commodity Real Return Strategy Fund	4,523
PIMCO Income Fund	28,217
PIMCO Total Return Fund	6,757
Pioneer Strategic Income Fund	5,626
Prudential Financial stock	353
T. Rowe Price Real Estate Fund	4,543
Tocqueville Gold Fund	37,332
Vanguard Equity Income Fund	18,222
Vanguard Growth Index Signal Fund	13,671
Vanguard Mid Cap Growth Index Fund	20,533
Vanguard Mid Cap Value Index Fund	29,995
Vanguard Total Bond Market Index Signal Fund	6,750
Vulcan Value Partners Small Cap Fund	11,504
Wells Fargo Stable Value Fund	4,484
Total Listed Securities	<u>\$ 771,214</u>

AFFIDAVIT

I, William H. Pryor Jr., do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

4/15/13  
(DATE)

William H. Pryor Jr.  
(NAME)

Mje W. Cochran  
(NOTARY)

MY COMMISSION EXPIRES AUGUST 23, 2014

Senator FRANKEN. Thank you, Judge.  
Professor Barkow, do you have friends or family or both here?

**STATEMENT OF RACHEL ELISE BARKOW, NOMINEE TO BE A  
MEMBER OF THE U.S. SENTENCING COMMISSION**

Ms. BARKOW. I do. Thank you very much. I would like to introduce two friends who are with me here today: Jennifer Plitsch and Mary Beth Schultz. Thank you both for coming.

I would like to thank you, Mr. Chair, for convening this hearing and the whole Judiciary Committee. I owe great thanks to the President for the extraordinary honor of this nomination.

My family could not be here today, but I bring their love and support with me, and I am very grateful to them and most of all for my son, Nate, who is very excited to watch this Webcast and I think might be the only six-and-a-half-year-old to see a Judiciary Committee hearing. So I am very proud of that, too, as a legislation professor.

Senator FRANKEN. Hi, Nate.

[Laughter.]

Ms. BARKOW. I would also like to thank my colleagues and my friends and my students at NYU for their support and enthusiasm about this, and for my other friends who were not able to come, I thank them as well. That concludes my opening statement, but I am happy to answer any questions.

[The biographical information of Ms. Barkow follows:]

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).

Rachel Elise Barkow  
(maiden name: Rachel Elise Selinfreund)

2. **Position:** State the position for which you have been nominated.

Member, United States Sentencing Commission

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

New York University School of Law  
40 Washington Square South Rm. 310F  
New York, New York 10012

4. **Birthplace:** State date and place of birth.

1971; Denver, Colorado

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1993 – 1996, Harvard Law School; J.D. (*magna cum laude*), 1996

1989 – 1993, Northwestern University; B.A. (with honors), 1993

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2002 – present  
New York University School of Law  
40 Washington Square  
New York, New York 10012



Segal Family Professor of Regulatory Law and Policy (2011 – present)  
 Faculty Director, Center on the Administration of Criminal Law (2008 – present)  
 Professor of Law (2007 – 2011)  
 Associate Professor (2005 – 2006)  
 Assistant Professor (2002 – 2005)

2010 – present  
 Themis Bar Review  
 320 West Ohio Street, Suite 4W  
 Chicago, Illinois 60654  
 Lecturer

2007 – 2012  
 Law Preview LLC  
 10 Cordage Park Circle, Suite 122  
 Plymouth, Massachusetts 02360  
 Lecturer

2008 – 2009  
 Emanuel Bar Review  
 Wolters Kluwer Law & Business  
 130 Turner Street  
 Waltham, Massachusetts 02453  
 Lecturer

Fall 2008  
 Harvard Law School  
 1563 Massachusetts Avenue  
 Cambridge, Massachusetts 02138  
 Beneficial Visiting Professor of Law

1998 – 2002  
 Kellogg Huber Hansen Todd & Evans, P.L.L.C.  
 (now Kellogg Huber Hansen Todd Evans & Figel, P.L.L.C.)  
 1615 M Street, NW, Suite 400  
 Washington, DC 20036  
 Associate  
 (Please note that I took a leave from the firm during 2001 to serve as a John M. Olin Fellow at Georgetown. During that year, I worked on a few matters for Kellogg Huber on a part-time basis.)

2001  
 Georgetown University Law Center (on leave from Kellogg Huber)  
 600 New Jersey Avenue, NW  
 Washington, DC 20001  
 John M. Olin Fellow in Law

1997 – 1998  
The Honorable Antonin Scalia  
Supreme Court of the United States  
1 First Street, NW  
Washington, DC 20543  
Law Clerk

1996 – 1997  
The Honorable Laurence H. Silberman  
U.S. Court of Appeals for the District of Columbia Circuit  
333 Constitution Avenue, NW  
Washington, DC 20001  
Law Clerk

Summer 1996  
Davis Polk & Wardwell  
450 Lexington Avenue  
New York, New York 10017  
Summer Associate

1995 – 1996  
Professor Richard Fallon  
Harvard Law School  
Cambridge, Massachusetts 02138  
Research Assistant

Summer 1995  
Kirkland & Ellis  
655 15th Street, NW  
Washington, DC 20005  
Summer Associate

Summer 1995  
Covington & Burling  
1201 Pennsylvania Avenue, NW  
Washington, DC 20044  
Summer Associate

Summer 1994  
Montgomery Little & McGrew  
(now Montgomery Little Soran & Murray, PC)  
The Quadrant  
5445 DTC Parkway, Suite 800  
Englewood, Colorado 80111  
Summer Associate

Summer 1993  
 Michael Selinfreund, Esq  
 55 Madison Street, Suite 755  
 Denver, Colorado 80206  
 Office Assistant

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I am not required to register for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

NYU Distinguished Teaching Award (2013)

American Law Institute, Elected Member (2008)

Exemplary Legal Writing Nominee in Green Bag for *The Ascent of the Administrative State and the Demise of Mercy*, 121 HARV. L. REV. 1332 (2008)

Podell Distinguished Teaching Award, NYU School of Law (2007)

Winner of the Association of American Law Schools, Section on Criminal Justice Outstanding Paper Competition for *Separation of Powers and the Criminal Law*, 58 STAN. L. REV. 989 (2006)

John M. Olin Fellowship (2001)

Law Clerk of the Year, awarded by the Supreme Court Publications Office (1998)

Editor, Harvard Law Review (1994 – 1996)

Sears Prize, Harvard Law School (awarded for the two highest grade point averages in the first year of law school) (1994)

Best Memorandum Award: First Year Ames Moot Court Competition, Harvard Law School (1994)

Phi Beta Kappa, Northwestern University (1993)

Mortar Board, Northwestern University (1993)

Dean's List, Northwestern University (1993)

James Alton James Scholar (most distinguished social science academic, junior year),  
Northwestern University (1992)

Valedictorian, Gateway High School (1989)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association (2004 – present)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

District of Columbia, 1999  
Maryland, 1998 (inactive)

There have been no lapses in membership, though, as indicated, my membership in Maryland is inactive.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States, 2002  
United States Court of Appeals for the District of Columbia Circuit, 2000

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

American Law Institute (2008 – present)

Conviction Integrity Policy Advisory Panel, Manhattan District Attorney's Office  
(2010 – present)

- b. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, neither organization listed in response to 11a currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin.

12. **Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

*Prosecutorial Administration*, 99 U. VA. L. REV. (forthcoming 2013). Copy supplied.

*Law versus Politics: Comments on William J. Stuntz's The Collapse of American Criminal Justice*, 63 U. TORONTO L.J. 138 (2012). Copy supplied.

*The Problem with Mandatory Minimums*, N.Y. Times Room for Debate, August 19, 2012. Copy supplied.

*Clarify What's Cruel and Unusual*, N.Y. Times Room for Debate, July 8, 2012. Copy supplied.

CRIMINAL LAW AND ITS PROCESSES: CASES AND MATERIALS (Aspen 9th Ed., 2012) (with Sanford Kadish, Stephen J. Schulhofer & Carol S. Steiker). Copy supplied.

*Save the Jury*, Slate.com, May 30, 2012. Copy supplied.

*Sentencing Guidelines at the Crossroads of Politics and Expertise*, 160 U. PA. L. REV. 1599 (2012). Copy supplied.

*Life without Parole and the Hope for Real Sentencing Reform*, in LIFE WITHOUT PAROLE: AMERICA'S NEW DEATH PENALTY? (Charles J. Ogletree, Jr., & Austin Sarat eds., NYU Press, 2012). Copy supplied.

PROSECUTORS IN THE BOARDROOM: USING CRIMINAL LAW TO REGULATE CORPORATE CONDUCT (Anthony Barkow & Rachel Barkow eds., NYU Press, 2011). I was the co-editor of the book, co-authored the introduction and was the sole author of the chapter, *The Prosecutor as Regulatory Agency*. Copy supplied.

*Federalism and Criminal Law: What the Feds Can Learn from the States*, 109 MICH. L. REV. 519 (2011). Copy supplied.

*Insulating Agencies: Avoiding Capture Through Institutional Design*, 89 TEX. L. REV. 15 (2010). Copy supplied.

*Organizational Guidelines for the Prosecutor's Office*, 31 CARDOZO L. REV. 2089 (2010). Copy supplied.

*Categorizing Graham*, 23 FED. SENTENCING REP. 49 (2010). Copy supplied.

With David B. Edwards, *How Health Care Can Reduce Crime*, Forbes.com, June 22, 2010. Copy supplied.

With Anne Milgram, *Keeping Consumer Cops on the Beat*, May 13, 2010. Copy supplied.

*The Court of Life and Death: The Two Tracks of Constitutional Sentencing Law and the Case for Uniformity*, 107 MICH. L. REV. 1145 (2009). Copy supplied.

*Institutional Design and the Policing of Prosecutors: Lessons from Administrative Law*, 61 STAN. L. REV. 869 (2009). Copy supplied.

*The Politics of Forgiveness: Reconceptualizing Clemency*, 21 FED. SENTENCING REP. 153 (2009). Copy supplied.

*Mercy's Decline and Administrative Law's Ascendancy and Reply*, in CRIMINAL LAW CONVERSATIONS (Paul H. Robinson et al. eds., 2009). Copy supplied.

*An Ounce of Prevention: Realistic Treatment for Our Pathological Politics*, in CRIMINAL LAW CONVERSATIONS (Paul H. Robinson et al. eds., 2009). Copy supplied.

*The Ascent of the Administrative State and the Demise of Mercy*, 121 HARV. L. REV. 1332 (2008). Copy supplied.

With Joshua J. Libling, *Sentencing Laws Needn't Drain Us*, BOSTON HERALD, Dec. 6, 2008. Copy supplied.

*Confronting Mortality*, Huffington Post, Oct. 31, 2008. Copy supplied.

*Electing Administrations, Not Just Presidents*, Huffington Post, Oct. 13, 2008. Copy supplied.

*The Feminist Threat*, Huffington Post, June 27, 2008. Copy supplied.

*The Rise and Fall of the Political Question Doctrine*, in *THE POLITICAL QUESTION DOCTRINE AND THE SUPREME COURT OF THE UNITED STATES* (Bruce Cain & Nada Mourada-Sabbah eds., 2007). Copy supplied.

*Originalists, Politics, and Criminal Law on the Rehnquist Court*, 74 GEO. WASH. L. REV. 1043 (2006). Copy supplied.

*Delegating Punitive Power: The Political Economy of Sentencing Commission and Guideline Formation*, 84 TEX. L. REV. 1973 (2006) (with Kathleen M. O'Neill). Copy supplied.

*The Political Market for Criminal Justice*, 104 MICH. L. REV. 1713 (2006). Copy supplied.

*Tribute to Justice Antonin Scalia*, 62 N.Y.U. ANN. SURV. AM. L. 15 (2006). Copy supplied.

*Crimes and Constitutions*, THE NYU LAW SCHOOL MAGAZINE at 69 (Autumn 2006). Copy supplied.

*Separation of Powers and the Criminal Law*, 58 STAN. L. REV. 989 (2006). Copy supplied.

*Our Federal System of Sentencing*, 58 STAN. L. REV. 119 (2005). Copy supplied.

*Federalism and the Politics of Sentencing*, 105 COLUM. L. REV. 1276 (2005). Copy supplied.

*Administering Crime*, 52 UCLA L. REV. 715 (2005). Copy supplied.

*Criminal Trials*, in *THE HERITAGE GUIDE TO THE CONSTITUTION* (Edwin Meese III et al. eds., 2005). Copy supplied.

Op-ed in *NEWSDAY*, October 20, 2005, at B20. Copy supplied.

*The Devil You Know: Federal Sentencing After Blakely*, 16 FED. SENTENCING REP. 312 (Aug. 2004). Copy supplied.

*Recharging the Jury*, THE NYU LAW SCHOOL MAGAZINE at 14 (Autumn 2003). Copy supplied.

*Recharging the Jury: The Criminal Jury's Constitutional Role in an Era of Mandatory Sentencing*, 152 U. PA. L. REV. 33 (2003). Copy supplied.

*More Supreme than Court?: The Fall of the Political Question Doctrine and the Rise of Judicial Supremacy*, 102 COLUM. L. REV. 237 (2002). Copy supplied.

*A Tale of Two Agencies: A Comparative Analysis of FCC and DOJ Review of Telecommunications Mergers*, 2000 U. CHI. LEGAL F. 29 (with Peter Huber). Copy supplied.

*Mergers and Acquisitions*, in P. HUBER ET AL., FEDERAL TELECOMMUNICATIONS LAW (2d ed. 1999) (with Peter Huber et al.). Copy supplied.

*Note, And Justiciability for All?: Future Injury Plaintiffs and the Separation of Powers*, 109 HARV. L. REV. 1066 (1996). Copy supplied.

Book Note, *A Bold Leap Backward?*, 108 HARV. L. REV. 2047 (1995) (reviewing MARY ANN GLENDON, A NATION UNDER LAWYERS (1994)). Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

Center on the Administration of Criminal Law, Establishing Conviction Integrity Programs in Prosecutors' Offices (2012). Copy supplied.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

Joint Letter to Senate Judiciary Committee supporting nomination of Srikanth Srinivasan to become a judge on the United States Court of Appeals for the District of Columbia Circuit (April 4, 2013). Copy supplied.

Comments of the Center on the Administration of Criminal Law to the Federal Communications Commission regarding the rates charged for interstate inmate calling services (March 25, 2013). Copy supplied.

Joint Letter to Senate Judiciary Committee regarding the need for examination of the Office of the Pardon Attorney's Conduct (June 26, 2012). Copy supplied.



Joint letter to Senate Judiciary Committee supporting nomination of Caitlin Halligan to become a judge on the United States Court of Appeals for the District of Columbia Circuit (Feb. 28, 2011). Copy supplied.

Regional Hearing on the 25th Anniversary of the Sentencing Reform Act of 1984, Hearing before the United States Sentencing Commission (July 10, 2009). Copy supplied.

The Proposed Consumer Financial Protection Agency: Implications for Consumers and the FTC, Hearing before the Subcommittee on Commerce, Trade, and Consumer Protection of the House Committee on Energy and Commerce (July 8, 2009). Copy supplied and video is available here: <http://www.c-spanvideo.org/program/AgencyP>.

Letter from the Center on the Administration of Criminal Law to the United States Sentencing Commission regarding the need for the Commission to include among its priorities the consideration of fiscal costs and racial and ethnic impact statements (August 29, 2008).

*Blakely v. Washington* and the Future of the Federal Sentencing Guidelines, Hearing before the Senate Committee on the Judiciary (July 13, 2004). Copy supplied.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I have compiled this list of my speeches and talks based on a careful review of my personal records and calendars, as well as Internet searches. To the best of my knowledge this list is substantially complete, although it is possible there may be some events that I was unable to recall or locate.

April 5-6, 2013: "Theorizing the Modern Criminal System," NYU School of Law, New York, NY. Notes supplied.

April 5, 2013: "Class on Statutory Interpretation for Admitted Students Day," NYU School of Law, New York, NY. Notes supplied.

February 12, 2013: "The Financial Crisis and the Revolving Door," Panel Discussion, New York City Bar Association, New York, NY. Notes supplied and a recording is available here: <https://www.youtube.com/watch?v=2qf3yIGNUBo>.

February 7, 2013: "Regulatory State, Capture, and Financial Regulatory Reform," Conference on The Political Economy of Financial Regulation, The George Washington University Law School, Washington, DC. This presentation was based on *Insulating Agencies: Using Institutional Design To Limit Agency Capture*, 89 TEX. L. REV. 15 (2010), which is attached in response to question 12a. Notes supplied and a recording is available here: <http://www.law.gwu.edu/News/2012-2013Events/Pages/PoliticalEconomy.aspx>.

February 4, 2013: "Considering Careers in Criminal Justice: Prosecution v. Defense," New York, NY. I spoke on a panel to NYU students about different career paths in criminal justice. I have no notes, transcript or recording. NYU School of Law is located at 40 Washington Square South, New York, NY 10012.

January 28, 2013: "Prosecutorial Administration," Criminal Theory Colloquium, NYU School of Law, New York, NY. This talk was based on *Prosecutorial Administration*, 99 U. VA. L. REV. (forthcoming 2013), which is attached in response to question 12a. I have no notes, transcripts or recording. NYU School of Law is located at 40 Washington Square South, New York, NY 10012.

November 9, 2012: "Exploring the Drug Court Alternative," Conference on Exploding Prison Population and Drug Offenders: Rethinking State Drug Sentencing, Valparaiso, IN. Notes supplied.

August 7, 2012: "Overview of Criminal Law," Sponsors for Educational Opportunity, Corporate Law Institute, New York, NY. Outline and reading handout supplied.

July 20, 2012: "Current Problems in Criminal Law," Panel Discussion, Institute of Judicial Administration, New York, NY. Notes supplied.

June 8, 2012: "William Stuntz, The Collapse of American Criminal Justice," Roundtable Discussion, Law and Society Annual Conference, Honolulu, HI. I have no notes, transcript or recording, but this presentation was based on *Law versus Politics: Comments on William J. Stuntz's The Collapse of American Criminal Justice*, 63 U. TORONTO L.J. 138 (2012) (book review), which is attached in response to question 12a. The Law and Society Association is located at 380 South 1400 East, #313, Salt Lake City, UT 84112.

June 1, 2012: Commented on Joshua Kleinfeld, "A Theory of Criminal Victimization," Junior Faculty Forum, Hosted by Harvard, Stanford, and Yale Law Schools, Cambridge, MA. Notes supplied.

May 21, 2012: "Alternatives to Incarceration: The Use of 'Drug Courts' in the Federal and State Systems," Panel Discussion, Federal Bar Council and NYU Center on the Administration of Criminal Law, New York, NY. Notes supplied.

May 10, 2012: Moderator, Judicial Panel on Sentencing, Levenson Foundation Symposium, Federal Bar Association, Washington, DC. Notes supplied.

May 4, 2012: Commented on Youngjae Lee, "Military Service, Culpability, and Blame," Criminal Law Roundtable, Columbia Law School, New York, NY. Notes supplied.

April 17, 2012: Organizer, Conference on New Frontiers in Race and Criminal Justice, Center on the Administration of Criminal Law, NYU School of Law, New York, NY. I have attached my notes. My introduction to the event is here: <http://www.c-spanvideo.org/program/NYU>, and a recording of my introduction of Michelle Alexander is available here: <http://www.youtube.com/watch?v=hg2AjQbIESs>.

April 17, 2012: "Race, Sentencing and the Problem of Mass Incarceration," Panel Discussion, Conference on New Frontiers in Race and Criminal Justice, Center on the Administration of Criminal Law, NYU School of Law, New York, NY. A recording is available here: <http://www.youtube.com/watch?v=QSxZd10HovU>.

April 13, 2012: Commented on David Zaring, "The Interface Problem in Administrative Law," Administrative Law Roundtable, Columbia Law School, New York, NY. Notes supplied.

April 4, 2012: Moderator, "Fraud, Bribery, and Corruption: Are Corporate Cops Fighting a Losing Battle?," The Milbank Tweed Forum, NYU School of Law, New York, NY. Notes supplied and a recording is available here: <http://www.youtube.com/watch?v=T5GINwRmhOI>.

March 8, 2012: "What Went Wrong with the Preemption Regulatory Framework," Panel Discussion, Consumer Financial Protection After Dodd-Frank: The New Legislation's Enhanced Enforcement Structure, City Bar of New York, New York, NY. Notes supplied.

February 2, 2012: Introduction of Cyrus R. Vance, Jr., "Conversation on Urban Crime," Center on the Administration of Criminal Law, NYU School of Law, New York, NY. Notes supplied and a recording is available here: [http://www.law.nyu.edu/news/VANCE\\_CYRUS\\_URBAN\\_CRIME](http://www.law.nyu.edu/news/VANCE_CYRUS_URBAN_CRIME).

October 29, 2011: "Sentencing Guidelines at the Crossroads of Politics and Expertise," *University of Pennsylvania Law Review* Symposium, "Sentencing Law: Rhetoric and Reality," Philadelphia, PA. This presentation was based on

*Sentencing Guidelines at the Crossroads of Politics and Expertise*, 160 U. PA. L. REV. 1599 (2012), which is attached in response to question 12a. Notes supplied.

October 21, 2011: "The Need for Cost-Benefit Analysis in Criminal Justice Reform," Panel Discussion, Society for Benefit-Cost Analysis, Washington, DC. Notes supplied.

July 28, 2011: "Overview of Criminal Law," Sponsors for Educational Opportunity, Corporate Law Institute, New York, NY. I used the same notes provided for the August 7, 2012 event.

July 15, 2011: "Current Problems in Criminal Law," Panel Discussion, Institute of Judicial Administration, New York, NY. Notes supplied.

June 10, 2011: "Defining White-Collar Crime and the Scope of the White-Collar Crime Problem," The Committee on Law and Justice, National Academy of Sciences, Washington, DC. Notes supplied.

April 30, 2011: Moderator, Criminal Justice Roundtable, Yale Law School, New Haven, CT. Notes supplied.

February 28, 2011: "Life Without Parole and the Hope for Real Sentencing Reform," Faculty Workshop, Temple University Beasley School of Law, Philadelphia, PA. This presentation was based on *Life without Parole and the Hope for Real Sentencing Reform*, in *LIFE WITHOUT PAROLE: AMERICA'S NEW DEATH PENALTY?* (Charles J. Ogletree, Jr., & Austin Sarat eds., NYU Press, 2012), which is attached in response to question 12a. Notes supplied.

February 7, 2011: "Life Without Parole and the Hope for Real Sentencing Reform," Faculty Workshop, NYU School of Law, New York, NY. This presentation was based on *Life without Parole and the Hope for Real Sentencing Reform*, in *LIFE WITHOUT PAROLE: AMERICA'S NEW DEATH PENALTY?* (Charles J. Ogletree, Jr., & Austin Sarat eds., NYU Press, 2012), which is attached in response to question 12a. I used the same notes provided for the February 28, 2011 event.

December 4, 2010: "Life Without Parole and the Hope for Real Sentencing Reform," Conference on Life Without Parole: America's New Death Penalty, Amherst College, Amherst, MA. This presentation was based on *Life without Parole and the Hope for Real Sentencing Reform*, in *LIFE WITHOUT PAROLE: AMERICA'S NEW DEATH PENALTY?* (Charles J. Ogletree, Jr., & Austin Sarat eds., NYU Press, 2012), which is attached in response to question 12a. I used the same notes provided for the February 28, 2011 event.

December 4, 2010: Commented on Marie Gottschalk, "Life Sentences and Penal Reform," Conference on Life Without Parole: America's New Death Penalty, Amherst College, Amherst, MA. Notes supplied.

October 28, 2010: "Insulating Agencies: Avoiding Capture Through Institutional Design," Yale Law Women Workshop, Yale Law School, New Haven, CT. I have no notes, transcript or recording, but this presentation was based on *Insulating Agencies: Using Institutional Design To Limit Agency Capture*, 89 TEX. L. REV. 15 (2010), which is attached in response to question 12a. Yale Law School is located at 127 Wall Street, New Haven, CT 06511.

September 23, 2010: "Insulating Agencies: Avoiding Capture Through Institutional Design," Furman Scholars Workshop, NYU School of Law, New York, NY. I have no notes, transcript or recording, but this presentation was based on *Insulating Agencies: Using Institutional Design To Limit Agency Capture*, 89 TEX. L. REV. 15 (2010), which is attached in response to question 12a. NYU School of Law is located at 40 Washington Square South, New York, NY 10012.

September 15, 2010: "Crime and Punishment: The Costs and Benefits of Criminal Justice Policy," Panel Discussion, Institute for Policy Integrity, New York, NY. I spoke about the importance of taking into account the costs and benefits of criminal justice policies to promote rational decision-making. I have no notes, transcript or recording. Institute for Policy Integrity is located at NYU School of Law, Wilf Hall, 139 MacDougal Street, Third Floor, New York, NY 10012.

September 8, 2010: "Originalism and Criminal Law," Discussion with Professor Stephanos Bibas, Federalist Society of NYU, New York, NY. This presentation was based on *Originalists, Politics, and Criminal Law on the Rehnquist Court*, 74 GEO. WASH. L. REV. 1043 (2006), which is attached in response to question 12a. Notes supplied.

August 26, 2010: "Orientation: On Becoming a Law Student," NYU School of Law, New York, NY. Notes supplied.

July 28, 2010: "Overview of Criminal Law," Sponsors for Educational Opportunity, Corporate Law Institute, New York, NY. I used the same notes provided for the August 7, 2012 event.

July 16, 2010: "Current Problems in Criminal Law," Panel Discussion, Institute of Judicial Administration, New York, NY. Notes supplied.

May 24, 2010: "Federal Sentencing at a Crossroads: A Call for Leadership," Panel Discussion, Federal Bar Council and NYU Center on the Administration of Criminal Law, New York, NY. Notes supplied and a recording is available here: <http://www.youtube.com/watch?v=5ehTL2ChTfE>.

April 23, 2010: Panelist and Moderator, "Competition and Cooperation Within the State," Panel Discussion, Conference on Allocating Prosecutorial Power, NYU Center on the Administration of Criminal Law, New York, NY. Notes supplied and video is available here: [http://www.law.nyu.edu/centers/adminofcriminallaw/events/allocatingprosecutorialpower/CONFERENCE\\_VIDEOS](http://www.law.nyu.edu/centers/adminofcriminallaw/events/allocatingprosecutorialpower/CONFERENCE_VIDEOS).

April 9, 2010: "Rethinking the Administration of Criminal Justice," Admitted Students Day Talk, NYU School of Law, New York, NY. Notes supplied.

March 22, 2010: "Scholarship in the Public Interest," Panel Discussion, Leaders in the Public Interest Series, NYU School of Law, New York, NY. My talk was about my scholarship and pro bono work. I have no notes, transcript or recording. NYU School of Law is located at 40 Washington Square South, New York, NY 10012.

March 12, 2010: "Financial Reform Is Essential for Economic Recovery," Panel Discussion, National Community Reinvestment Coalition, Washington, DC. My talk was based on designing an agency to regulate consumer financial products. I have no notes, transcript or recording, but to the best of my recollection, I would have made similar remarks to those I made at the January 6, 2010 event. The National Community Reinvestment Coalition is located at 727 15th Street, NW, Suite 900, Washington, DC 20005.

March 10, 2010: "Does the United States Incarcerate Too Many People?" Panel Discussion, NYU School of Law, New York, NY. Notes supplied and a recording is available here: <http://www.youtube.com/watch?v=B42WRT2WOYU>.

March 5, 2010: "Federalism and Criminal Law: What the Feds Can Learn from the States," Public Law Workshop, Columbia Law School. This presentation was based on *Federalism and Criminal Law: What the Feds Can Learn from the States*, 109 MICH. L. REV. 519 (2011), which is attached in response to question 12a. Notes supplied.

February 19, 2010: "The Roberts Court: A View from the Supreme Court Bar and the Academy," Panel Discussion, Institute of Judicial Administration, New York, NY. A recording is available here: <http://www.youtube.com/watch?v=1R-ZaufYBVk>.

January 6, 2010: "Designing a Consumer Financial Protection Agency," Conference on Regulating Consumer Financial Products, Federal Reserve Bank of New York and NYU School of Law, New York, NY. Notes supplied and a recording is available here: [http://www.youtube.com/watch?v=H\\_IP4YRTxT4](http://www.youtube.com/watch?v=H_IP4YRTxT4).

November 15, 2009: "Organizational Guidelines for the Prosecutor's Office," Symposium on New Perspectives on *Brady* and Other Disclosure Obligations,

Benjamin N. Cardozo School of Law, New York, NY. This presentation was based on Organizational Guidelines for the Prosecutor's Office, 31 Cardozo L. Rev. 2089 (2010), which is attached in response to question 12a. Notes supplied.

October 21, 2009: "The Supreme Court's New Term (and New Justice)," Panel Discussion, NYU School of Law, New York, NY. Notes supplied and a recording is available here: <http://www.law.nyu.edu/centers/adminofcriminallaw/events/supremecourtterm/index.htm>.

October 18, 2009: "Sentencing Law and Policy," Family Day, NYU School of Law, New York, NY. Notes supplied.

July 30, 2009: "Overview of Criminal Law," Sponsors for Educational Opportunity, Corporate Law Institute, New York, NY. I used the same notes provided for the August 7, 2012 event.

July 7, 2009: Podcast Discussion of *Boyle v. United States*, Federalist Society. Notes supplied and a recording of the podcast is available here: [http://www.fed-soc.org/publications/pubID.1497/pub\\_detail.asp](http://www.fed-soc.org/publications/pubID.1497/pub_detail.asp).

May 8, 2009: "Regulation by Prosecutors: Competing Regulators," Panel Discussion, Center on the Administration of Criminal Law, NYU School of Law, New York, NY. A recording is available here: [http://www.law.nyu.edu/centers/adminofcriminallaw/events/regulationbyprosecutors/ECM\\_PRO\\_062107](http://www.law.nyu.edu/centers/adminofcriminallaw/events/regulationbyprosecutors/ECM_PRO_062107).

May 1, 2009: "The Prosecutor as Regulatory Agency," Criminal Justice Roundtable, University of Chicago Law School, Chicago, IL. I have no notes, transcript or recording, but this workshop presentation was based on *The Prosecutor as Regulatory Agency*, in *PROSECUTORS IN THE BOARDROOM: USING CRIMINAL LAW TO REGULATE CORPORATE CONDUCT* (Anthony Barkow & Rachel Barkow, eds., NYU Press, 2011), which is attached in response to question 12a. University of Chicago Law School is located at 1111 East 60th Street, Chicago, IL 60637.

April 17, 2009: "The Court of Life and Death: The Two Tracks of Constitutional Sentencing Law and the Case for Uniformity," Faculty Workshop, Cornell Law School, Ithaca, NY. This presentation was based on *The Court of Life and Death: The Two Tracks of Constitutional Sentencing Law and the Case for Uniformity*, 107 MICH. L. REV. 1145 (2009), which was attached in response to question 12a. Notes supplied.

"Prosecutorial Activism," Faculty Workshop, NYU School of Law, New York, NY, April 6, 2009. I have no notes, transcript or recording, but this workshop was based on *The Prosecutor as Regulatory Agency*, in *PROSECUTORS IN THE*

BOARDROOM: USING CRIMINAL LAW TO REGULATE CORPORATE CONDUCT (Anthony Barkow & Rachel Barkow, eds., NYU Press, 2011), which is attached in response to question 12a. NYU School of Law is located at 40 Washington Square South, New York, NY 10012.

December 8, 2008: "The Politics of Forgiveness: Reconceptualizing Clemency," ABA Commission on Effective Criminal Sanctions Roundtable on "Second Look" Sentencing Reforms, Washington, DC. This presentation was based on *The Politics of Forgiveness: Reconceptualizing Clemency*, 21 FED. SENTENCING REP. 153 (2009), which is attached in response to question 12a. Notes supplied.

November 19, 2008: Discussion and Q&A regarding my work at the Center on the Administration of Criminal Law with Harvard Law School students enrolled in my Legislation and Regulation Course, Harvard Law School, Cambridge, MA. Notes supplied.

October 20, 2008: "The Court of Life and Death: The Two Tracks of Constitutional Sentencing Law and the Case for Uniformity," Faculty Workshop, George Washington University Law School, Washington, DC. This presentation was based on *The Court of Life and Death: The Two Tracks of Constitutional Sentencing Law and the Case for Uniformity*, 107 MICH. L. REV. 1145 (2009), which is attached in response to question 12a. Notes supplied.

October 17, 2008: Commented on Stuart Chinn, "The Supreme Court as Regime Stabilizer," Justin Crowe, "Amendments as Causes," Willy Forbath, "Courting the State," and Karen Orren, "Crime and American Constitutional Development," American Constitutional Development Conference, Harvard Law School, Cambridge, MA. Notes supplied.

October 6, 2008: "Institutional Design and the Policing of Prosecutors: Lessons from Administrative Law," Faculty Workshop, Harvard Law School, Cambridge, MA. This workshop was based on *Institutional Design and the Policing of Prosecutors: Lessons from Administrative Law*, 61 STAN. L. REV. 869 (2009), which is attached in response to question 12a. Notes supplied.

August 7, 2008: "The Court of Life and Death: The Two Tracks of Constitutional Sentencing Law and the Case for Uniformity," NYU Summer Brown Bag Series, New York, NY. I have no notes, transcript or recording, but this presentation was based on *The Court of Life and Death: The Two Tracks of Constitutional Sentencing Law and the Case for Uniformity*, 107 MICH. L. REV. 1145 (2009), which is attached in response to question 12a. NYU School of Law is located at 40 Washington Square South, New York, NY 10012.

July 15, 2008: "Elections and the Courts: *Bush v. Gore* and the 2000 Presidential Election Revisited," Panel Discussion, NYU School of Law Roundtable, Florence, Italy. I have no notes, transcript or recording, but I discussed the



political question doctrine based on my article, *More Supreme than Court?: The Fall of the Political Question Doctrine and the Rise of Judicial Supremacy*, 102 COLUM. L. REV. 237 (2002), which is attached in response to question 12a. NYU School of Law is located at 40 Washington Square South, New York, NY 10012.

May 6, 2008: "Institutional Design and the Policing of Prosecutors: Lessons from Administrative Law," Law and Politics Workshop, University of Chicago Law School, Chicago, IL. This workshop was based on *Institutional Design and the Policing of Prosecutors: Lessons from Administrative Law*, 61 STAN. L. REV. 869 (2009), which is attached in response to question 12a. Notes supplied.

May 2, 2008: Commented on Marie-Eve Sylvestre, "Rethinking Criminal Responsibility for Poor Offenders and Criminal Law Reform in Light of Sociological Evidence," Criminal Justice Roundtable, Harvard Law School, Cambridge, MA. Notes supplied.

February 1, 2008: "Sentencing Theories," Panel Discussion, Federal Bar Council, Nevis, West Indies. This presentation consisted of a series of skits acted out by lawyers in the Federal Bar Council. (I was not one of the actors.) My role was to raise questions about the skits in terms of larger theories of sentencing. I have no notes, transcript or recording. The Federal Bar Council is located at 123 Main Street, #L100, White Plains, NY 10601.

November 27, 2007: "An Administrative Law Paradigm for Criminal Justice," NYU Hoffinger Criminal Justice Colloquium, New York, NY. Notes supplied.

October 27, 2007: Young Law Professor Meeting on the Future of the American Law Institute, Roundtable Discussion, American Law Institute Invitational Conference, Montchanin, DE. This was an informal roundtable to discuss possible future goals for the American Law Institute. I have no notes, transcript or recording. American Law Institute is located at 4025 Chestnut Street, Philadelphia, PA 19104.

October 10, 2007: Moderator, Conference on Prosecuting Terrorism, The Center on Law and Security, NYU School of Law, New York, NY. As moderator, I kept the queue for people interested in asking questions regarding terrorism prosecutions. I have no notes, transcript or recording. The Center on Law and Security is located at NYU School of Law, Wilf Hall, 139 MacDougal Street, Fourth Floor, New York, NY 10012.

October 5, 2007: The Process of Publishing a Law Review Article, Lecture to Prospective Teaching Candidates, NYU School of Law, New York, NY. This was a short lecture informing students how to get their work published in law reviews. I have no notes, transcript or recording. NYU School of Law is located at 40 Washington Square South, New York, NY 10012.

August 27, 2007: Speech on Thurgood Marshall to the Thurgood Marshall Class of LL.M.s at NYU School of Law, New York, NY. Notes supplied.

July 30, 2007: "Sentencing and Incarceration," Institute of Judicial Administration Training and Education Program for the Chinese Judiciary, New York, NY. Notes supplied.

July 10, 2007: "Current Issues in Criminal Law," Panel Discussion, Institute of Judicial Administration, New York, NY. Notes supplied.

April 13, 2007: Moderator, Criminal Justice Roundtable, Yale Law School, New Haven, CT. As moderator, I kept the queue for people interested in asking questions. I have no notes, transcript or recording. Yale Law School is located at 127 Wall Street, New Haven, CT 06511.

January 29, 2007: "Adjudication Without Representation? Exploring the Lack of Diversity Among Supreme Court Clerks," Panel Discussion, NYU School of Law, New York, NY. This was a discussion with former Supreme Court law clerks about the role of law clerks and how they are selected. I have no notes, transcript or recording, but press coverage is supplied. NYU School of Law is located at 40 Washington Square South, New York, NY 10012.

July 12, 2006: "Current Issues in Criminal Law," Panel Discussion, Institute of Judicial Administration, New York, NY. Notes supplied.

May 12, 2006: "Delegating Punitive Power: The Political Economy of Sentencing Commission and Guideline Formation," Criminal Justice Roundtable, University of Chicago Law School, Chicago, IL. I have no notes, transcript or recording, but this presentation was based on *Delegating Punitive Power: The Political Economy of Sentencing Commission and Guideline Formation*, 84 TEX. L. REV. 1973 (2006) (with Kathleen M. O'Neill), which is attached in response to question 12a. University of Chicago Law School is located at 1111 East 60th Street, Chicago, IL 60637.

April 7, 2006: "Separation of Powers and the Criminal Law," Constitutional Theory Conference, Philadelphia, PA. This presentation was based on *Separation of Powers and the Criminal Law*, 58 STAN. L. REV. 989 (2006), which is attached in response to question 12a. I have no notes, transcript or recording, but to the best of my recollection, I would have made similar remarks to those I made at the January 4, 2006 event.

March 2, 2006: "Federal Sentencing After *United States v. Booker*: One Year Later," New York City Bar Panel Discussion, New York, NY. Notes supplied.

February 4, 2006: "Delegating Punitive Power: The Political Economy of Sentencing Commission and Guideline Formation," *Texas Law Review*

Symposium, "Punishment Law and Policy," The University of Texas School of Law, Austin, TX. I have no notes, transcript or recording, but this presentation was based on *Delegating Punitive Power: The Political Economy of Sentencing Commission and Guideline Formation*, 84 TEX. L. REV. 1973 (2006) (with Kathleen M. O'Neill), which is attached in response to question 12a. The University of Texas Law School is located at 727 East Dean Keeton Street, Austin, TX 78705.

February 4, 2006: Commented on Susan Klein, "Enhancing the Judicial Role in Criminal Plea and Sentence Bargaining," *Texas Law Review* Symposium, "Punishment Law and Policy," The University of Texas School of Law, Austin, TX. Notes supplied.

January 5, 2006: "Separation of Powers and the Criminal Law," University of Chicago Law School Constitutional Law Workshop, Chicago, IL. This talk was based on *Separation of Powers and the Criminal Law*, 58 STAN. L. REV. 989 (2006), which is attached in response to question 12a. I have no notes, transcript or recording, but to the best of my recollection, I would have made similar remarks to those I made at the January 4, 2006 event.

January 4, 2006: "Separation of Powers and the Criminal Law," American Association of Law Schools, Section on Criminal Justice Lunch, Washington, DC. This talk was based on *Separation of Powers and the Criminal Law*, 58 STAN. L. REV. 989 (2006), which is attached in response to question 12a. Notes supplied.

October 28, 2005: "Originalists, Politics, and Criminal Law on the Rehnquist Court," *George Washington Law Review* Symposium, "The Legacy of the Rehnquist Court," George Washington University Law School, Washington, DC. This talk was based on *Originalists, Politics, and Criminal Law on the Rehnquist Court*, 74 GEO. WASH. L. REV. 1043 (2006), which is attached in response to question 12a. Notes supplied.

October 19, 2005: "Separation of Powers and the Criminal Law," Faculty Workshop, Emory School of Law, Atlanta, GA. This talk was based on *Separation of Powers and the Criminal Law*, 58 STAN. L. REV. 989 (2006), which is attached in response to question 12a. Notes supplied.

September 30, 2005: Moot Job Talk Panel to Advise Prospective Teaching Candidates, NYU School of Law, New York, NY. This was a session with NYU students to help them prepare for job interviews and presentations on the law teaching market. I have no notes, transcript or recording. NYU School of Law is located at 40 Washington Square South, New York, NY 10012.

September 29, 2005: "The Future and Force of the Guidelines," Panel Discussion, Federal Judicial Center, Workshop for Judges of the First and Seventh Circuits, Chicago, IL. Notes supplied.

July 28, 2005: Co-Organizer, Junior Criminal Law Professors' Gathering, George Washington University Law School, Washington, DC. This was an informal event for junior faculty who focus on criminal law. Others presented papers at this event, and I took part in the discussion. I have no notes, transcript or recording. There was no sponsoring organization for this event.

July 14, 2005: "Current Issues in Criminal Law," Panel Discussion, Institute of Judicial Administration, New York, NY. Notes supplied.

July 11, 2005: "Influences on Federal Sentencing Policy: Post *Booker*," Panel Discussion, Federal Judicial Center, National Sentencing Policy Institute, Washington, DC. I spoke about the state of sentencing law after the Supreme Court's decision in *Booker*, which made the Guidelines no longer mandatory. I have no notes, transcript or recording. The Federal Judicial Center is located at 1 Columbus Circle, NE, Washington, DC 20544.

June 2, 2005: "Separation of Powers and the Criminal Law," NYU Summer Brown Bag Series, New York, NY. I have no notes, transcript or recording, but this talk was based on *Separation of Powers and the Criminal Law*, 58 STAN. L. REV. 989 (2006), which is attached in response to question 12a. NYU School of Law is located at 40 Washington Square South, New York, NY 10012.

May 16, 2005: "Separation of Powers and the Criminal Law," May Gathering of Law School Junior Faculty, Georgetown University Law Center, Washington, DC. This talk was based on *Separation of Powers and the Criminal Law*, 58 STAN. L. REV. 989 (2006), which is attached in response to question 12a. Outline supplied.

May 14, 2005: Commented on William J. Stuntz, "The Political Constitution of Criminal Justice," Criminal Justice Roundtable, Harvard Law School, Cambridge, MA. Notes supplied.

April 29, 2005: "Federalism and the Politics of Sentencing," New York Junior Faculty Colloquium, Fordham Law School, New York, NY. This presentation was based on *Federalism and the Politics of Sentencing*, 105 COLUM. L. REV. 1276 (2005), which is attached in response to question 12a. I have no notes, transcript or recording, but to the best of my recollection, I would have made similar remarks to those I made at the February 15, 2005 event.

April 22, 2005: Moderator, "Global Rules for National Administrative Law," NYU Global Administrative Law Conference, New York, NY. Notes supplied.

April 12, 2005: "Justice Scalia's Criminal Law Jurisprudence," *NYU Annual Survey of American Law* Dedication Ceremony, New York, NY. This talk was printed in, *Tribute to Justice Antonin Scalia*, 62 N.Y.U. ANN. SURV. AM. L. 15 (2006), which is attached in response to question 12a.

March 3, 2005: "The Future of Federal Sentencing After *Booker/Fanfan*," *Harvard Journal on Legislation* Symposium, "Criminal Sentencing at the Crossroads," Harvard Law School, Cambridge, MA. Notes supplied.

February 16, 2005: "The Future of Federal Sentencing After *Booker/Fanfan*," American Constitution Society, NYU School of Law, New York, NY. Notes supplied.

February 15, 2005: "Administering Crime," Advanced Criminal Law Seminar, Fordham University Law School, New York, NY. This talk was based on *Administering Crime*, 52 UCLA L. REV. 715 (2005), which is attached in response to question 12a. Notes supplied.

January 31, 2005: "Federalism and the Politics of Sentencing," Faculty Workshop, NYU School of Law, New York, NY. I have no notes, transcript or recording, but this presentation was based on *Federalism and the Politics of Sentencing*, 105 COLUM. L. REV. 1276 (2005), which is attached in response to question 12a. NYU School of Law is located at 40 Washington Square South, New York, NY 10012.

January 22, 2005: "Federalism and the Politics of Sentencing," *Columbia Law Review* Symposium, "Sentencing: What's at Stake for the States?," Columbia Law School, New York, NY. This presentation was based on *Federalism and the Politics of Sentencing*, 105 COLUM. L. REV. 1276 (2005), which is attached in response to question 12a. Notes supplied.

December 10, 2004: "*Blakely* and the Future of the Federal Sentencing Guidelines," Board of Trustees Meeting, NYU School of Law, New York, NY. Notes supplied.

November 12, 2004: "Administering Crime," Faculty Workshop, George Washington University Law School, Washington, DC. This talk was based on *Administering Crime*, 52 UCLA L. REV. 715 (2005), which is attached in response to question 12a. I have no notes, transcript or recording, but to the best of my recollection, I would have made similar remarks to those I made at the September 16, 2004 event.

October 28, 2004: "The Media and the Democratic Process," Panel Discussion on the 2004 Election, NYU School of Law, New York, NY. Notes supplied.

September 16, 2004: "Administering Crime," Public Law Colloquium, Harvard Law School, Cambridge, MA. This talk was based on *Administering Crime*, 52 UCLA L. REV. 715 (2005), which is attached in response to question 12a. Notes supplied.

September 8, 2004: "*Blakely* and the Future of the Federal Sentencing Guidelines," Criminal Law Lunch Group, NYU School of Law, New York, NY. Notes supplied.

August 16, 2004: "*Blakely* and the Model Penal Code Revisions on Sentencing," National Association of Sentencing Commissions Conference, Santa Fe, NM. Notes supplied.

April 16, 2004: "Administering Crime," Faculty Workshop, University of Notre Dame Law School, Notre Dame, IN. This talk was based on *Administering Crime*, 52 UCLA L. REV. 715 (2005), which is attached in response to question 12a. I have no notes, transcript or recording, but to the best of my recollection, I would have made similar remarks to those I made at the September 16, 2004 event.

February 4, 2004: "Guantanamo: The Supreme Court Case and the Extent of U.S. Power Over 'Illegal Combatants' – What Will it Mean?" Panel Discussion, Center on Law and Security, NYU School of Law, New York, NY. Notes supplied.

November 21, 2003: Commented on Christine Harrington & Umut Turem, "Neoliberal Regulatory Regimes and State Legitimation Crises," Law and Society Workshop, NYU Law and Society Program, New York, NY. Notes supplied.

August 11, 2003: "A Review of the Supreme Court's 2002 Term Criminal Law Cases," Institute of Judicial Administration Panel at the American Bar Association Annual Meeting, San Francisco, CA. Notes supplied.

July 1, 2003: "Politics, Federalism, and Sentencing Reform," NYU Summer Brown Bag Series, New York, NY. I have no notes, transcript or recording, but this presentation was based on an earlier version of *Federalism and the Politics of Sentencing*, 105 COLUM. L. REV. 1276 (2005), which is attached in response to question 12a. NYU School of Law is located at 40 Washington Square South, New York, NY 10012.

April 15, 2003: Moderator, Drug Law Symposium, NYU School of Law, New York, NY. Notes supplied.

October 29, 1999: "A Tale of Two Agencies: A Comparative Analysis of FCC and DOJ Review of Telecommunications Mergers," Antitrust in the Information Age Symposium, University of Chicago Law School Legal Forum, Chicago, IL. I have no notes, transcript or recording, but this presentation was based on *A Tale*

*of Two Agencies: A Comparative Analysis of FCC and DOJ Review of Telecommunications Mergers*, 2000 U. CHI. LEGAL F. 29 (with Peter Huber), which is attached in response to question 12a. The University of Chicago Legal Forum is located at 1111 East 60th Street, Chicago, IL 60637.

June 1989: Valedictorian Speech, Gateway High School, Aurora, CO. I have no notes, transcript or recording. Gateway High School is located at 1300 South Sable Boulevard, Aurora, CO 80012.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have searched through my notes and files and performed searches on electronic databases to try to obtain all media interviews. The following list is the result of those searches:

Maggie Clark, *Governors Balance Pardons With Politics*, THE PEW CHARITABLE TRUSTS, February 8, 2013. Copy supplied.

Alan Neuhauser, *NYPD Captain Tweets Warnings About Felons Released from Prison*, DNAINFO.COM: NEW YORK, December 20, 2012. Copy supplied.

*Rajat Gupta Could Get Prison Term of 6 Years: Legal Experts*, INDIA TIMES, October 14, 2012. [Please note that I was misquoted in this article. The reporter claims that I said that “[i]t is not necessary to give Gupta a high sentence . . . particularly in light of his unblemished record,” when in fact I said that I had no opinion on what sentence was appropriate because I did not know all the facts of the case or his background. I had no idea whether his record was “unblemished” or not, and would have never commented on it. I gave her factors the judge could consider and various arguments, and was misquoted as endorsing one of those arguments.] Copy supplied.

Jennifer Frey, *Introducing Adam Samaha*, THE LAW SCHOOL MAGAZINE: NYU SCHOOL OF LAW, 2012. Copy supplied.

Michael Rothfeld, *Corporate Probation: Punishing or Punting?*, THE WALL ST. J., August 31, 2012. Copy supplied.

Ann Givens, *Recusal in trial of 3 cops baffles*, NEWSDAY, July 22, 2012. Copy supplied.

Robert Iafolla, *Justices lean toward discretion in criminal cases*, LOS ANGELES DAILY JOURNAL, July 12, 2012. Copy supplied.

Emily Bazelon, *Supreme Court Year in Review: The justices seem to understand that juveniles aren't like the rest of us*, SLATE, June 25, 2012. Copy supplied.

Bob Ortega, *Arizona Prisoners Rarely Granted Clemency*, AZCENTRAL.COM, May 12, 2012. Copy supplied.

Benjamin Weiser, *Jury Statute Not Violated by Protester, Judge Rules*, N.Y. TIMES, April 19, 2012. Copy supplied.

Emily Bazelon, *If George Zimmerman Were on Trial; Which evidence about the shooting of Trayvon Martin could a jury hear?*, SLATE, April 2, 2012. Copy supplied.

Jess Bravin, *Rulings Expand Right to Counsel*, WALL ST. J., March 22, 2012. Copy supplied.

Nina Totenberg, *High Court Expands Defendants' Plea Bargain Rights*, NPR, March 21, 2012. Copy supplied.

Juvenile Justice, Afternoon Shift, March 19, 2012. A recording of the interview is available here: <http://www.wbez.org/blog/bez/2012-03-19/mondays-game-plan-afternoon-shift-shaky-starts-97438>.

Ashby Jones and Joanna Chung, *Care for Aging Inmates Puts Strains on Prisons*, WALL ST. J., January 27, 2012. Copy supplied.

June Grasso, Bloomberg News, Interview regarding *Lafler* and *Frye* oral argument, Fall 2011. Audio recording supplied.

Richard A. Oppel, Jr., *Sentencing Shift Gives New Leverage to Prosecutors*, N.Y. TIMES, September 25, 2011. Copy supplied.

Tamer El-Ghobashy, *Judges Acquit More Often Than Juries*, WALL ST. J., August 8, 2011. Copy supplied.

Colin Ross, *Prosecutors in the Boardroom*, MAIN JUSTICE, June 30, 2011. Copy supplied.

Carter Dougherty, *Warren Says Consumer Bureau Foes Should Look at Wall Street 'Behemoths'*, BLOOMBERG.COM, March 25, 2011. Copy supplied.

Noeleen G. Walder, *Conviction Integrity Panel Aims to Create 'Best Practices'*, N.Y.L.J., November 26, 2010. Copy supplied.

Mara Gay, *Could Drug Charges Against Judge Affect His Past Cases?*, AOL News, October 5, 2010. Copy supplied.



Michael Rothfeld, *Fraud Cases Get Rehashed After Court Ruling*, WALL ST. J., September 25, 2010. Copy supplied.

Monica Davey, *Missouri Tells Judges Cost of Sentences*, N.Y. TIMES, September 18, 2010. Copy supplied.

Larry Reibstein, *The Libertarian Among Us*, NYU Magazine, 2010. Copy supplied.

Mimi Hall, *Record Number Seek President's Clemency*, USA TODAY, April 27, 2010. Copy supplied.

June Grasso, Bloomberg News, Interview regarding New York case, *Rosario*, April 2010. Audio recording supplied.

Terry Morgan & Hanna Siegel, *The Fight Against Sex Offenders*, ABC WORLD NEWS, March 2, 2010. Copy supplied.

Ann Givens, *Woman: In escape, I had to drive drunk*, NEWSDAY, July 15, 2009. Copy supplied.

SCOTUScast featuring Rachel Barkow, THE FEDERALIST SOCIETY, July 7, 2009. A recording of the interview is available here: <http://www.fed-soc.org/publications/detail/scotuscast-7-7-09-featuring-rachel-barkow>.

Interview with WPIX regarding nomination of Judge Sonia Sotomayor, May 26, 2009. I do not have a transcript or video of this interview.

Interview with NY1 regarding nomination of Judge Sonia Sotomayor, May 26, 2009. I do not have a transcript or video of this interview.

Sue Reisinger, *Feds Seize Assets of Companies Suspected of Hiring Illegal Aliens*, CORPORATE COUNSEL, April 21, 2009. Copy supplied.

Ann Givens, *Experts: Tough road for Nassau DA to reopen Tynes case*, NEWSDAY, March 4, 2009. Copy supplied.

Sophia Chang & Keith Herbert, *Criminal investigation in Wal-Mart trampling death under way*, NEWSDAY, December 12, 2008. Copy supplied.

Jodi Kantor, *Young Voters Flock to Polls*, N.Y. TIMES, February 6, 2008. Copy supplied.

Michal Lando, *Jews join struggle to end New Jersey death penalty*, JERUSALEM POST, December 13, 2007. Copy supplied.

Pamela A. MacLean, *Change is Foreseen in Next Era of the DOJ*, NAT'L L.J., September 3, 2007. Copy supplied.

Pamela A. MacLean, *Clement, Mukasey Stand Out as Possible AG Candidates*, NAT'L L.J., August 29, 2007. Copy supplied.

Joseph Goldstein, *Bush Faces Void at Justice Department*, N.Y. SUN, August 28, 2007. Copy supplied.

Radio Interview With Brian Lehrer, *Following Up: Commuting Costs* (about possible ramifications of the Libby commutation on federal sentencing), July 6, 2007. A recoding of the interview is available here:  
<http://www.wnyc.org/shows/bl/episodes/2007/07/06/segments/81747>.

Anemona Hartocollis, *Disease Drove Sex Attack*, N.Y. TIMES, April 30, 2007. Copy supplied.

Jeff Vandam, *Stroke and Scam*, N.Y. TIMES, January 21, 2007. Copy supplied.

Seth Stern, *Lean Times Spur Hard Look at Prison Population Boom*, CONG. Q. WKLY., September 8, 2006. Copy supplied.

Matt Phillips, *Q&A: Balance of Powers*, WALL ST. J., May 26, 2006. Copy supplied.

Jason McLure, *Sex Crimes and Punishment*, LEGAL TIMES, April 24, 2006. Copy supplied.

Anna Schneider-Mayerson, *The Little Supremes*, N.Y. OBSERVER, November 14, 2005. Copy supplied.

Marcie Samartino, *Should there be a religious test for Supreme Court nominees?*, NEWSDAY, October 25, 2005. Copy supplied.

Jodi Balsam, *Partners in Crime*, NYU Magazine, 2004. Copy supplied.

David Ho, *Mistrial Declared in Tyco Case After Juror Threatened*, COX NEWS SERVICE, April 2, 2004. Copy supplied.

Andrew Ross Sorkin, *Increasing Turmoil on Jury Threatens Tyco Trial*, N.Y. TIMES, March 27, 2004. Copy supplied.

David Ho, *Splintered Jury Leaves Tyco Executives Fate in Limbo*, COX NEWS SERVICE, March 26, 2004. Copy supplied.

Interview with ABC-7 NY regarding Martha Stewart case, March 5, 2004. I do not have a transcript or video of this interview.

*Introducing Rachel Barkow*, NYU Magazine, 2002. Copy supplied.

Margie Kelley, *Teaching Lessons*, HARVARD LAW BULLETIN, Summer 2002. Copy supplied.

Eric Zorn, *Trying Our Best to Stop Clichés, N-*, CHICAGO TRIBUNE, February 23, 1992. Copy supplied.

**13. Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have never held a public office. I have not had any unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Advisor to the Department of Justice Agency Review Transition Team for President-Elect Barack Obama, January 2009

Criminal Justice Policy Team, Barack Obama for President, April 2007 to November 2008

Law and Judiciary Committee, Barack Obama for President, July 2007 to November 2008

Justice Policy Team, John Kerry for President, 2004

**14. Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
  - i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

From 1996 to 1997, I was a law clerk to Judge Laurence H. Silberman, U.S. Court of Appeals for the District of Columbia Circuit.

From 1997 to 1998, I was a law clerk to Justice Antonin Scalia, Supreme Court of the United States.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced law alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

Summer 1996  
Davis Polk & Wardwell  
450 Lexington Avenue  
New York, NY 10017  
Summer Associate

1998 – 2002  
Kellogg Huber Hansen Todd & Evans, P.L.L.C.  
(now Kellogg Huber Hansen Todd Evans & Figel, P.L.L.C.)  
1615 M Street, NW, Suite 400  
Washington, DC 20036  
Associate  
(Please note that I took a leave from the firm during 2001 to serve as a John M. Olin Fellow at Georgetown. During that year, I worked on a few matters for Kellogg Huber on a part-time basis.)

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator.

- b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

Before I started teaching and after my judicial clerkships, I worked at Kellogg Huber Hansen Todd & Evans as an associate. During that time, I worked primarily on telecommunications, administrative law, and antitrust issues in matters before the Federal Communications Commission and in

the federal courts. I primarily drafted comments before the FCC and appellate briefs.

Since I started teaching at NYU School of Law in 2002, I have devoted most of my time to my teaching and scholarship. But I have worked on several pro bono matters while working as a professor, typically filing amicus briefs in appellate courts in criminal law matters.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

When I worked for Kellogg Huber from 1998 to 2002, my typical clients were telecommunications companies and the issues involved administrative law, telecommunications, and antitrust.

Since I started teaching at NYU School of Law in 2002, virtually all of my legal work has been pro bono and on criminal law issues. I have filed several briefs on behalf of the Center on the Administration of Criminal Law and one brief on behalf of the Charles Hamilton Houston Institute for Race and Justice.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

When I worked for Kellogg Huber from 1998 to 2002, my practice was divided between administrative law matters (roughly 70% of my work) and appellate cases (roughly 30% of my work). I was not a trial lawyer. I worked on matters before the Federal Communications Commission and then the appeals of those matters. In those matters, I was frequently a primary drafter of any comments filed with the agency or briefs filed with the court of appeals. I did not argue any of the cases in which I filed appellate briefs.

As a law professor, I now only work on appellate briefs as a consultant or editor. Those briefs have been in federal court.

- i. Indicate the percentage of your practice in:
- |                            |     |
|----------------------------|-----|
| 1. federal courts;         | 65% |
| 2. state courts of record; | 5%  |
| 3. other courts;           |     |
| 4. administrative agencies | 30% |
- ii. Indicate the percentage of your practice in:
- |                          |     |
|--------------------------|-----|
| 1. civil proceedings;    | 50% |
| 2. criminal proceedings. | 50% |

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have never tried a case before a court or an administrative law judge.

- i. What percentage of these trials were:

1. jury;
2. non-jury.

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have consulted on or helped write several amicus briefs in the Supreme Court. The following is a list of those briefs:

Assisted with the drafting/consulted on (with co-counsel) Brief of Amicus Curiae Center on the Administration of Criminal Law in Support of a Petition for a Writ of Certiorari in *Burwell v. United States*, No. 12-7099, *petition for cert. filed*, Dec. 6, 2012. Copy supplied.

Assisted with the drafting/consulted on (with co-counsel) Brief of Amicus Curiae Center on the Administration of Criminal Law in *Alleyne v. United States*, No. 11-9335 (2012). Copy supplied.

Assisted with the drafting/consulted on (with co-counsel) Brief of Amicus Curiae Center on the Administration of Criminal Law in *Moncrieffe v. Holder*, No. 11-702 (2012). Copy supplied.

Assisted with the drafting/consulted on (with co-counsel) Brief of Amicus Curiae Center on the Administration of Criminal Law in *Missouri v. Frye*, 132 S.Ct. 1399 (2012) and *Lafler v. Cooper*, 132 S.Ct. 1376 (2012). Copy supplied.

Assisted with the drafting/consulted on Brief of Amicus Curiae Center on the Administration of Criminal Law in *Dorsey v. United States*, 132 S.Ct. 2321 (2012). Copy supplied.

Assisted with the drafting/consulted on (with co-counsel) Brief of Amicus Curiae Center on the Administration of Criminal Law et al. in *Brown v. Plata*, 131 S.Ct. 1910 (2011). Copy supplied.

Assisted with the drafting/consulted on (with co-counsel) Brief of Amicus Curiae Center on the Administration of Criminal Law et al. in *Connick v. Thompson*, 131 S.Ct. 1350 (2011). Copy supplied.

Assisted with the drafting/consulted on (with co-counsel) Brief of Amicus Curiae Center on the Administration of Criminal Law in *Carachuri-Rosendo v. Holder*, 130 S.Ct. 2577 (2010). Copy supplied.

Assisted with the drafting/consulted on (with co-counsel) Brief of Amicus Curiae Center on the Administration of Criminal Law in *United States v. O'Brien*, 130 S.Ct. 2169 (2010). Copy supplied.

Assisted with the drafting/consulted on Brief of Amicus Curiae Center on the Administration of Criminal Law in *Graham v. Florida*, 130 S.Ct. 2011 (2010). Copy supplied.

Assisted with the drafting/consulted on Brief of Amicus Curiae Center on the Administration of Criminal Law in *United States v. Stevens*, 130 S.Ct. 1577 (2010). Copy supplied.

Assisted with the drafting/consulted on Petition for a Writ of Certiorari in *Triple S Management Corp. v. Municipal Revenue Collection Center*, No. 09-233, petition for cert. filed, Aug 25, 2009 (cert. denied). Copy supplied.

Assisted with the drafting/consulted on (with co-counsel) Brief of Amicus Curiae Center on the Administration of Criminal Law in *Reid v. United States*, No. 08-1011, petition for cert. filed, Feb. 10, 2009 (cert. denied). Copy supplied.

Assisted with the drafting/consulted on (with co-counsel) Brief of Amicus Curiae Center on the Administration of Criminal Law in Support of a Petition for a Writ of Certiorari and Brief of Amicus Curiae Center on the Administration of Criminal Law in *Abuelhawa v. United States*, 556 U.S. 816 (2009). Copies supplied.

Assisted with the drafting/consulted on (with co-counsel) Brief of Amicus Curiae Center on the Administration of Criminal Law in *Boyle v. United States*, 556 U.S. 938 (2009). Copy supplied.

Assisted with the drafting/consulted on (with co-counsel) Brief of Amicus Curiae The Charles Hamilton Houston Institute for Race and Justice, *Gonzalez v. United States*, 553 U.S. 242 (2008). Copy supplied.

15. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe

in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
  - b. the name of the court and the name of the judge or judges before whom the case was litigated; and
  - c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
1. *Alleyne v. United States*, No. 11-9335 (2012). I helped draft and edit the amicus brief in this case, which was filed on behalf of the Center on the Administration of Criminal Law. The brief argued that facts that are necessary to trigger mandatory minimum sentences must be found by a jury beyond a reasonable doubt. The Center was represented by a law firm that took the case pro bono. Our brief was filed on November 26, 2012, and a decision is pending.

Counsel for the Center:

Anthony S. Barkow  
Jenner & Block LLP  
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(212) 891-1600

Counsel for Petitioner:

Mary E. Maguire  
Assistant Federal Public Defender  
Office of the Federal Public Defender  
701 East Broad Street, Suite 3600  
Richmond, VA 23219  
(804) 343-0800

Counsel for Respondent:

Donald B. Verrilli, Jr.  
Solicitor General  
Department of Justice  
Washington, DC 20530  
(202) 514-2217

2. *Missouri v. Frye*, 132 S.Ct. 1399 (2012) and *Lafler v. Cooper*, 132 S.Ct. 1376 (2012). I helped draft and edit the amicus brief for the Center on the Administration of Criminal Law in these cases, which raised the question of whether the Sixth Amendment right to effective assistance of counsel extends to plea negotiations—including situations where defense counsel fails to communicate a plea offer, as was the case in *Missouri v. Frye*, or the defendant



rejects a plea offer based on bad advice from defense counsel, as was the case in *Lafler v. Cooper*. The Center filed its brief on July 22, 2011, and I worked on the briefs from approximately June 2011 through July 2011. The Center was represented by a law firm that took the case pro bono. The Supreme Court ruled in favor of the defendants and recognized claims for ineffective assistance of counsel at the plea bargaining stage.

Counsel for the Center:  
Daniel Meron  
Latham & Watkins LLP  
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Washington, DC 20004  
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Counsel for petitioner Lafler:  
B. Eric Restuccia  
Michigan Solicitor General  
PO Box 30212  
Lansing, MI 48909  
(517) 373-1124

Counsel for petitioner Missouri:  
Shaun J. Mackelprang  
P.O. Box 899  
Jefferson City, MO 65102  
(573) 751-3321

Counsel for respondent Cooper:  
Valerie R. Newman  
State Appellate Defender Office  
645 Griswold Street, Suite 3300  
Penobscot Building  
Detroit, MI 48226  
(313) 256-9833

Counsel for respondent Frye:  
Emmett D. Queener  
Assistant Public Defender  
1000 West Nifong  
Building 7, Suite 100  
Columbia, MO 65203  
(573) 882-9855

3. *Dorsey v. United States*, 132 S.Ct. 2321 (2012). This case, along with a companion case of *Hill v. United States*, raised the question of whether the Fair Sentencing Act, which reduced the disparity between crack and powder cocaine

sentences from a ratio of 100 to 1 to 18 to 1, applied to offenders who committed their crime before the date the statute was enacted but were not sentenced until after its effective date. The Center filed its amicus brief on February 1, 2012, and I worked on the briefs from approximately December 2011 through February 2012. The Center was represented by a law firm that took the case pro bono. The Supreme Court ruled in favor of the defendants and held that the Fair Sentencing Act applied to offenders who committed their crime before the statute was enacted but who were not sentenced until after the statute's effective date.

Counsel for the Center:  
 Alexandra A.E. Shapiro  
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Counsel for Petitioner Dorsey:  
 Daniel T. Hansmeier  
 Staff Attorney  
 Federal Public Defender's Office  
 Central District of Illinois  
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 Springfield, IL 62701  
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Counsel for Petitioner Hill:  
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 Tinley Park, IL 60477  
 (708) 633-9100

Counsel for Respondent:  
 Donald B. Verrilli, Jr.  
 Solicitor General  
 Department of Justice  
 Washington, DC 20530  
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4. *Gonzalez v. United States*, 553 U.S. 242 (2008). I helped draft the amicus brief on behalf of The Charles Hamilton Houston Institute for Race and Justice in support of the petitioner in the Supreme Court case of *Gonzalez v. United States*. The case raised the question whether a federal criminal defendant must explicitly and personally waive his right to have an Article III judge preside over *voir dire*. The Institute filed a brief emphasizing the importance of juries and jury selection and arguing that the Federal Magistrates Act should be construed to require the express, personal consent of the defendant to avoid the constitutional question of

whether jury selection can be supervised by anyone other than a life-tenured, Article III judge. The Supreme Court ruled in favor of the United States. The Institute's brief was filed on November 12, 2007. I worked on the briefs from approximately October 2007 to November 2007.

Counsel for the Institute:  
Charles J. Ogletree  
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Cambridge, MA 02138  
(617) 495-8285

Counsel for Petitioner:  
Brent E. Newton  
Federal Public Defender for the Southern District of Texas  
The Lyric Centre  
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Houston, TX 77002  
(713) 718-4600

Counsel for Respondent:  
Paul D. Clement  
Bancroft, PLLC  
1919 M Street, NW, Suite 470  
Washington, DC 20036  
(202) 234-0090

5. *Graham v. Florida*, 130 S.Ct. 2011 (2010). I helped draft and edit the amicus brief and formulate the arguments for the Center on the Administration of Criminal Law in the Supreme Court cases of *Sullivan v. Florida* and *Graham v. Florida*. These cases involved the question whether juveniles can be sentenced to life without parole for crimes not resulting in the death of another person. The Center filed an amicus brief in support of the petitioners in both cases, arguing that the sentences violate the Eighth Amendment. The Center filed an amicus brief on July 23, 2009. I worked on the case from approximately May 2009 to July 2009. The Center was represented by a law firm that took the case pro bono. The Supreme Court ruled in favor of the defendants.

Counsel for the Center:  
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Steptoe & Johnson  
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(202) 429-3000

Counsel for Petitioner Sullivan:  
Bryan A. Stevenson

Equal Justice Initiative  
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Montgomery, AL 36104  
(334) 269-1803

Counsel for Petitioner Graham:  
Bryan S. Gowdy  
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Jacksonville, FL 32204  
(904) 350-0075

Counsel for Respondent:  
Scott D. Makar  
Solicitor General  
Office of the Attorney General  
The Capitol - PL-01  
Tallahassee, FL 32399  
(850) 414-3681

6. *Reid v. United States*, No. 08-1011, *petition for cert. filed*, Feb. 10, 2009 (cert. denied). I helped draft the amicus brief in support of the petition for a writ of certiorari in the Supreme Court for the Center on the Administration of Criminal Law in the case of *United States v. Reid*. The Center filed an amicus brief in support of a petition for a writ of certiorari on March 13, 2009. I worked on the briefs from approximately February 2009 through March 2009. The Center was represented by a law firm that took the case pro bono. The defendant was convicted at trial of multiple counts of firearms and Hobbs Act robbery offenses. At trial, the defendant was not allowed to cross-examine a government cooperator who testified against him regarding the sentence the witness would have faced absent his cooperation with the government. The Center filed a brief in support of the defendant's petition for a writ of certiorari arguing that the defendant's constitutional right to confront a witness regarding bias and motive to lie outweighed the judicially-created prophylactic rule aimed at limiting jury nullification that was used to prohibit the cross-examination. The petition was denied.

Counsel for the Center:  
Jeffrey L. Bleich  
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San Francisco, CA 94105  
(415) 512-4000

Counsel for Petitioner:  
Samuel W. Seymour  
Sullivan & Cromwell

125 Broad Street  
New York, NY 10004  
(212) 558-4000

Counsel for Respondent:  
Associate Justice Elena Kagan  
Supreme Court of the United States  
1 First Street, NE  
Washington, DC 20543

7. *GTE Service Corp. v. FCC*, 205 F.3d 416 (D.C. Cir. 2000). I represented GTE, US West, and the United States Telephone Association in proceedings before the Federal Communications Commission and later on appeal in the D.C. Circuit in a matter involving the duties of incumbent local exchange carriers (ILECs) to allow competitors to physically or virtually collocate the competitors' property on the ILECs' property. To the best of my recollection, I worked on all comments and briefs associated with this matter, and did so from 1999 to 2000. The FCC issued an order requiring the ILECs to allow collocation, 14 FCC Rcd 4761 (1999). I represented GTE, US West, and the United States Telephone Association on appeal before Chief Judge Edwards, Judge Ginsburg, and Judge Sentelle of the D.C. Circuit. The D.C. Circuit held that the 1996 Telecommunications Act did not permit the FCC to require local exchange carriers to provide physical collocation of competitors' equipment that was merely used or useful for either interconnection or access to unbundled network elements (UNEs), and remanded to the agency for further consideration. I did not argue the case on appeal.

Counsel for GTE:  
Mark L. Evans & Michael K. Kellogg  
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(202) 326-7900

William Barr  
GTE Service Corp.  
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Washington, DC 20036  
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Counsel for US West:  
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US West Inc.  
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Counsel for United States Telephone Association:

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Counsel for the FCC:

Laurence N. Bourne  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554  
(202) 418-1750

8. *WorldCom v. FCC*, 238 F.3d 449 (D.C. Cir. 2001). I represented incumbent local exchange carriers (ILECs) in proceedings before the Federal Communications Commission and later on appeal in the D.C. Circuit regarding an FCC decision granting the ILECs greater pricing flexibility. I served as a primary drafter of the ILECs' brief in the D.C. Circuit. The FCC granted the ILECs greater pricing flexibility, 14 FCC Rcd 14221 (1999), 1999 WL 669188. The D.C. Circuit appeal was before Chief Judge Edwards, Judge Sentelle, and Judge Randolph. The FCC decision was upheld. To the best of my recollection, I worked on this matter from 1999 to 2000.

Counsel for petitioner:

Carl S. Nadler  
Arnold & Porter  
555 Twelfth Street, NW  
Washington, DC 20004  
(202) 942-6130

Counsel for the FCC:

Lisa S. Gelb  
Federal Communications Commission  
445 12th Street, SW  
Washington DC 20554  
(202) 418-2019

Counsel for intervenors:

Mark L. Evans  
Kellogg Huber Hansen Todd Evans & Figel, PLLC  
1615 M Street, NW, Suite 400  
Washington, DC 20036  
(202) 326-7900

9. I represented SBC Communications in proceedings before the Federal Communications Commission that considered what network elements had to be

shared by incumbent local exchange carriers with their competitors and also whether ILECs had to unbundle the high-frequency spectrum of their copper loop. Most of my work in these matters was at the agency level, where I filed substantial comments over a period of many years. But I also helped draft initial versions of the appellate briefs for the argument in the D.C. Circuit. I was on leave from the firm when the briefs were finalized, so the final versions were completed by someone else. I did not argue the case. The D.C. Circuit granted the petition and remanded to the FCC. I worked on these and related matters throughout my time at Kellogg Huber, so from roughly 1998 to 2002. The FCC issued an order on unbundled network elements in 15 FCC Rcd 3696 (1999). It issued an order on line sharing in 14 FCC Rcd 20912. The D.C. Circuit decision reviewing these orders is *United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002).

Counsel for petitioners:

Michael K. Kellogg  
Kellogg Huber Hansen Todd Evans & Figel, PLLC.  
1615 M Street, NW, Suite 400  
Washington, DC 20036  
(202) 326-7900

Counsel for FCC:

Laurence N. Bourne and Richard K. Welch  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554  
(202) 418-1750

Counsel for intervenors:

Jonathan Jacob Nadler  
Squire, Sanders & Dempsey L.L.P.  
1201 Pennsylvania Avenue, NW, Suite 500  
Washington, DC 20004  
(202) 626-6838

David W. Carpenter  
Sidley & Austin  
One South Dearborn  
Chicago, IL 60603  
(312) 853-7000

10. I represented SBC Communications Inc. in regard to its merger with Ameritech. This case took up a large chunk of my time for two years, but my involvement consisted primarily of helping to file the necessary comments and materials with the Federal Communications Commission to get approval for the merger. The case was ultimately appealed, so I have included it on this list of litigated matters

even though I did not handle the appeal. To the best of my recollection, I worked on this matter from the time I started at the firm, October 1998 through December 1999. The merger was ultimately approved by the FCC in an order available at 14 F.C.C.R. 14,712, 1999 WL 1337659 (F.C.C. Oct. 6, 1999). The D.C. Circuit reviewed the FCC's decision in *Association of Communications Enterprises v. FCC*, 235 F.3d 662 (D.C. Cir. 2001). The judges on the DC Circuit panel were Chief Judge Edwards, Judge Rogers, and Judge Silberman.

Counsel for SBC:  
Michael K. Kellogg  
Kellogg Huber Hansen Todd Evans & Figel, PLLC.  
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Washington, DC 20036  
(202) 326-7900

Paul K. Mancini  
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Counsel for the FCC:  
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Counsel for appellant in the D.C. Circuit:  
Charles C. Hunter  
The Hayes Law Firm  
4265 San Felipe, Suite 1000  
Houston, TX 77027  
(713) 862-2152

Counsel for intervenor AT&T:  
Peter D. Keisler  
Sidley Austin LLP  
1501 K Street, NW  
Washington, DC 20005  
(202) 736-8027

16. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s).



(Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

In addition to the matters described in response to prior questions, I wrote comments to the FCC in several major proceedings. I represented SBC Communications, Inc. in proceedings before the FCC regarding the merger of AT&T and TCI and regarding the merger of Comcast and AT&T. I represented incumbent local exchange carriers in proceedings before the FCC regarding the merger of AOL and Time Warner. I also represented SBC Communications in its opposition to a petition by the Association of Local Telecommunications Services to get a declaratory ruling from the FCC regarding broadband loop provisioning. And I represented ILECs in their efforts to gain approval to offer long distance in various states. I also recently assisted with comments filed by the Center on the Administration of Criminal Law in an FCC proceeding addressing the interstate calling rates charged prison inmates.

In my role as the Faculty Director of the Center on the Administration of Criminal Law, I edited our report, *Establishing Conviction Integrity Programs in Prosecutor's Offices*, which outlines best practices to support prosecutors' efforts to ensure public confidence in the convictions they obtain and to reduce the incidence of wrongful convictions. The Report is the outgrowth of the Center's empirical research into best practices, as well as a roundtable with participants that included a number of current and former District Attorneys from across the country, representatives from the Department of Justice, and individuals from various state law enforcement agencies and research institutes. The Roundtable brought together these leading figures to develop templates that prosecutors can use to implement conviction integrity reforms in their offices. I have also worked on these issues as a member of the Manhattan District Attorney's Conviction Integrity Policy Advisory Panel.

I have not engaged in lobbying activities.

17. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

Administrative and Regulatory State, NYU School of Law.

Taught in 2003, 2004, 2005, 2006, 2010, 2011, 2012

The course covered statutory interpretation and basic principles of administrative law, including separation of powers and judicial review of agency decisions under the Administrative Procedure Act.

Spring 2003, 2004, 2005, 2006, 2010, 2011 and 2012 syllabi supplied.

Administrative Law, NYU School of Law.

Taught in 2003.

This course was a basic course in administrative law, covering separation of powers, agency rulemaking and adjudication, judicial review of agencies, and the Administrative Procedure Act.  
Fall 2003 syllabus supplied.

Advanced Administrative Law (now: Advanced Topics in Administrative Law), NYU School of Law.  
Taught as a seminar in 2005 and 2011 and a course in 2008.  
The course covered advanced topics in administrative law including executive oversight, agency choice of procedure, exceptions to notice and comment rulemaking, agency decisionmaking structures, preclusion of judicial review, standing, ripeness, exhaustion, finality, ex parte contact restrictions, Freedom of Information Act and other sunshine laws, and judicial management of agencies.  
Spring 2005 and 2008 syllabi supplied.

Constitutional Law Colloquium, NYU School of Law.  
Co-taught in 2006 with Professor Cristina Rodriguez.  
The course was a colloquium that consisted of a series of presentations by law professors on topics in constitutional law and theory. The colloquium was attended by students and interested faculty members.  
Fall 2006 syllabus supplied.

Criminal Law, NYU School of Law.  
Taught in 2004, 2007, 2010, 2011, and 2012.  
This course was the basic 1L course on criminal law, covering culpability, elements of offenses, homicide, rape, theft offenses, attempt, group criminality, defenses, and criminal punishment.  
Fall 2004, 2007, 2010, 2011, and 2012 syllabi supplied.

Legislation and Regulation, Harvard Law School.  
Taught in 2008.  
The course covered statutory interpretation and basic principles of administrative law, including separation of powers and judicial review of agency decisions under the Administrative Procedure Act.  
Fall 2008 syllabus supplied.

The Power of Prosecutors Reading Group, Harvard Law School.  
Taught in 2008.  
This course analyzed the scope of prosecutorial power, including prosecutorial power over plea bargaining and charging decisions, and considered possible reforms for addressing unchecked prosecutorial discretion.  
Fall 2008 syllabus supplied.

Public Law Colloquium, NYU School of Law.  
Co-taught in 2008 with Professor Cristina Rodriguez.

The course was a colloquium that consisted of a series of presentations by law professors on topics in public law, including constitutional law, criminal law, and administrative law. The colloquium was attended by students and interested faculty members. Spring 2008 syllabus supplied.

Punishment in Law, Politics, and Society, NYU Abu Dhabi  
Taught in 2011, 2012, and 2013.

This course investigates the state's power to punish through readings in philosophy, sociology, political science, and law. This is an undergraduate course offered in NYU's January Term that meets every day for three weeks and has an extensive field trip component.

January 2011, 2012, and 2013 syllabi supplied.

Criminal Law, Law Preview

Taught in 2007, 2008, 2009, 2010, 2011, and 2012.

This course is a four-hour lecture that gave a basic overview of criminal law to students in the summer before they start law school. I did not prepare a syllabus.

Criminal Law and Procedure, Emanuel Bar Review

Taught in 2008 and 2009.

This course covered the basic doctrine in criminal law and procedure that is typically covered on the multi-state bar exam. I did not prepare a syllabus.

18. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I do not have any anticipated receipts from previous business relationships, professional services, firm memberships, former employers, clients or customers.

19. **Outside Commitments During Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service? If so, explain.

I intend to continue my employment as a professor with NYU School of Law if I am appointed to the United States Sentencing Commission.

20. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

21. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

22. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

I am currently the Faculty Director of the Center on the Administration of Criminal Law at NYU. If I were to be appointed to the Commission, the Center would no longer participate in any hearing or other matter before the Commission, nor would it litigate cases involving the Sentencing Guidelines. If necessary under the relevant ethics rules, I would also be willing to relinquish my position as Faculty Director.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I am currently the Faculty Director of the Center on the Administration of Criminal Law at NYU. If I were to be appointed to the Commission, the Center would no longer participate in any hearing or other matter before the Commission, nor would it litigate cases involving the Sentencing Guidelines. If necessary under the relevant ethics rules, I would also be willing to relinquish my position as Faculty Director.

23. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

Most of my pro bono legal work is done under the auspices of the Center on the Administration of Criminal Law. Since the founding of the Center in 2008, I have worked on fifteen amicus briefs before the Supreme Court, all on a pro bono basis. Each brief consumed approximately 35-50 hours of my time. My work on the Center's Conviction Integrity Report was also entirely pro bono, and my service on the Manhattan District Attorney's Conviction Integrity Policy Advisory Panel is uncompensated. I am

currently working on comments to the FCC on the interstate long distance rates charged to prisoners, and that is also pro bono.

In addition to these briefs, virtually of my scholarship is devoted to improving government practices in criminal cases. In fact, my pro bono litigation work is often an outgrowth of that scholarship. I participate in numerous panels and conferences on topics of criminal justice reform.

I am also active in many activities at NYU that aim to help the disadvantaged. I have participated in the Root-Tilden-Kern selection program to help select students committed to service in the public interest. I have served as a mentor to students who are admitted under the An-Bryce program, which is a program for disadvantaged students who are the first in their family to attend law school. I have also counseled countless students on possible careers in public service, either in government positions or working as defense lawyers.

I have worked on criminal justice reform in other respects as well. For example, I have filed comments and testified before the United States Sentencing Commission. I have testified before the Senate Judiciary Committee, and I have discussed sentencing policy at judicial conferences. I have also worked on corporate criminal law reform. I have talked with the Government Accountability Office about improving deferred prosecution agreement practices and, through the Center on the Administration of Law, have organized a conference on the same topic and edited a book that explores these issues.

In addition to my work in criminal law, I have also done work on consumer protection reform, testifying before the Subcommittee on Commerce, Trade, and Consumer Protection of the House Committee on Energy and Commerce, and attending numerous conferences and panels on the same subject.

AO 10  
Rev. 1/2012

**FINANCIAL DISCLOSURE REPORT  
NOMINATION FILING**

*Report Required by the Ethics  
in Government Act of 1978  
(5 U.S.C. app. §§ 101-111)*

1. Person Reporting (last name, first, middle initial) Barkow, Rachel E.	2. Court or Organization United States Sentencing Commission	3. Date of Report 04/15/2013
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)  Commissioner	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination      Date 04/15/2013 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 1/1/2012 to 04/01/2013
7. Chambers or Office Address  NYU School of Law 40 Washington Square South, #310F New York, NY 10012		
<b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Insert signature on last page.		

**I. POSITIONS.** (Reporting individual only; see pp. 9-13 of filing instructions.)

☐ NONE (No reportable positions.)

<u>POSITION</u>	<u>NAME OF ORGANIZATION/ENTITY</u>
1. Segal Family Professor of Regulatory Law and Policy	NYU School of Law
2. Faculty Director	Center on the Administration of Criminal Law, NYU School of Law
3.	
4.	
5.	

**II. AGREEMENTS.** (Reporting individual only; see pp. 14-16 of filing instructions.)

☐ NONE (No reportable agreements.)

<u>DATE</u>	<u>PARTIES AND TERMS</u>
1. 2012	NYU Section 457(b) Deferred Compensation Plan (participant since 2008)
2.	
3.	

**FINANCIAL DISCLOSURE REPORT**

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Name of Person Reporting

Barkow, Rachel E.

Date of Report

04/15/2013

**III. NON-INVESTMENT INCOME.** *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)***A. Filer's Non-Investment Income**☐ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2013	NYU School of Law, compensation	\$121,954.44
2. 2013	Wolters Kluwer, royalties	\$19,071.13
3. 2012	NYU School of Law, compensation	\$283,817.44
4. 2012	NYU School of Law, summer grant	\$81,670.00
5. 2012	Law Preview, compensation	\$2,400.00
6. 2012	Valparaiso University, honorarium	\$1,500.00
7. 2012	NYU School of Law, royalties	\$460.47
8. 2012	Duke Law School, honorarium	\$300.00
9. 2012	Yeshiva/Cardozo School of Law, honorarium	\$300.00
10. 2012	Themis Bar Review, compensation	\$12,000.00
11. 2012	Shapiro, Arato & Isserles, consulting fee	\$500.00
12. 2012	University of Virginia School of Law, honorarium	\$300.00
13. 2011	NYU School of Law, compensation	\$256,176.85
14. 2011	NYU School of Law, summer grant	\$75,000.00
15. 2011	Law Preview, compensation	\$3,600.00
16. 2011	Themis Bar Review, compensation	\$6,000.00
17. 2011	Duke Law School, honorarium	\$300.00
18. 2011	George Washington University Law School, honorarium	\$300.00

**B. Spouse's Non-Investment Income** - *If you were married during any portion of the reporting year, complete this section.  
(Dollar amount not required except for honoraria.)*☒ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE
1.	

**FINANCIAL DISCLOSURE REPORT**  
 Page 3 of 9

<b>Name of Person Reporting</b>	<b>Date of Report</b>
Barkow, Rachel E.	04/15/2013

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

**IV. REIMBURSEMENTS** – *transportation, lodging, food, entertainment.*  
*(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)*
☐ NONE *(No reportable reimbursements.)*

	<u>SOURCE</u>	<u>DATES</u>	<u>LOCATION</u>	<u>PURPOSE</u>	<u>ITEMS PAID OR PROVIDED</u>
1. Exempt					
2.					
3.					
4.					
5.					



**FINANCIAL DISCLOSURE REPORT**  
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Name of Person Reporting	Date of Report
Barkow, Rachel E.	04/15/2013

**V. GIFTS.** *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*
☐ NONE *(No reportable gifts.)*

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.	Exempt		
2.			
3.			
4.			
5.			

**VI. LIABILITIES.** *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*
☒ NONE *(No reportable liabilities.)*

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.			
2.			
3.			
4.			
5.			

## FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting	Date of Report
Barkow, Rachel E.	04/15/2013

## VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-49 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
1. Citibank Checking Account	A	Interest	K	T					
2. Vanguard 500 Index Fund	B	Dividend	L	T					
3. Vanguard Intermediate-Term Bond Index Fund	B	Dividend	K	T					
4. Vanguard Intermediate Term Tax-Exempt Fund	A	Dividend	L	T					
5. Vanguard Mid-Cap Index Fund	A	Dividend	L	T					
6. Vanguard New York Tax-Exempt Money Market Fund	A	Dividend	K	T					
7. Vanguard Prime Money Market Fund	A	Dividend	K	T					
8. Vanguard Total International Stock Index Fund	B	Dividend	L	T					
9. Vanguard Total Stock Market Index Fund	C	Dividend	M	T					
10. IRA #1	C	Dividend	L	T					
11. -Vanguard Equity Income Fund									
12. -Vanguard Total Bond Market Index Fund									
13. IRA #2	B	Dividend	L	T					
14. -Vanguard GNMA Fund									
15. IRA #3	A	Dividend	J	T					
16. -Vanguard Total Bond Market Index Fund									
17. IRA #4	A	Dividend	K	T					

## 1. Income Gain Codes:

(See Columns B1 and D4)

## 2. Value Codes:

(See Columns C1 and D3)

## 3. Value Method Codes:

(See Column C2)

A = \$1,000 or less

F = \$50,001 - \$100,000

J = \$15,000 or less

N = \$250,001 - \$500,000

P3 = \$25,000,001 - \$50,000,000

Q = Appraised

U = Book Value

B = \$1,001 - \$2,500

G = \$100,001 - \$1,000,000

K = \$15,001 - \$50,000

O = \$500,001 - \$1,000,000

R = Cost (Real Estate Only)

V = Other

C = \$2,501 - \$5,000

H1 = \$1,000,001 - \$5,000,000

L = \$50,001 - \$100,000

P1 = \$1,000,001 - \$5,000,000

P4 = More than \$50,000,000

S = Assessed

W = Estimated

D = \$5,001 - \$15,000

I2 = More than \$5,000,000

M = \$100,001 - \$250,000

P2 = \$5,000,001 - \$25,000,000

T = Cash Market

E = \$15,001 - \$50,000

## FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting	Date of Report
Barkow, Rachel E.	04/15/2013

## VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-49 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from price disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
18. -Vanguard Equity Income Fund									
19. Vanguard Total Bond Market Index Variable Annuity		None	K	T					
20. 403(b) Plan #1	D	Dividend	M	T					
21. -Vanguard Total Bond Index Fund									
22. -Vanguard Total International Stock Index Fund									
23. -Vanguard Total Stock Market Index Fund									
24. NYU Deferred Compensation Plan	A	Dividend	M	T					
25. -Vanguard Target Retirement 2040 Fund									
26. -Vanguard Target Retirement 2050 Fund (y)									
27. JP Morgan Chase Bank Tenant Lease Security Deposit	A	Interest	J	T					
28. Vanguard Moderate Growth Portfolio (NY 529 Plan)		None	L	T					
29. Janus Global Technology Fund	A	Dividend	J	T					
30. 403(b) Plan #2		None	M	T					
31. -CREF Bond Market Fund									
32. -CREF Global Equities Fund									
33. -CREF Growth Fund									
34. -CREF Stock Fund									

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 I2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	
3. Value Method Codes (See Column C2)					

**FINANCIAL DISCLOSURE REPORT**  
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<b>Name of Person Reporting</b>	<b>Date of Report</b>
Barkow, Rachel E.	04/15/2013

**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount	Type (e.g.,	Value	Value	Type (e.g.,	Date	Value	Gain	Identity of
	Code 1 (A-H)	div., rent, or int.)	Code 2 (J-P)	Method Code 3 (Q-W)	bey, sell, redemption)	mm/dd/yy	Code 2 (J-P)	Code 1 (A-H)	buyer/seller (if private transaction)
35. -TIAA Real Estate Fund									
36. -TIAA Traditional Fund									
37.									
38.									

1. Income Code:	A = \$1,000 or less	B = \$1,001 - \$2,500	C = \$2,501 - \$5,000	D = \$5,001 - \$15,000	E = \$15,001 - \$50,000
(See Columns B1 and D4)	F = \$50,001 - \$100,000	G = \$100,001 - \$1,000,000	H = \$1,000,001 - \$5,000,000	I = \$5,001 - \$15,000	J = \$15,001 - \$50,000
2. Value Codes	J = \$15,000 or less	K = \$15,001 - \$50,000	L = \$50,001 - \$100,000	M = \$100,001 - \$250,000	N = \$250,001 - \$500,000
(See Columns C1 and D3)	N = \$250,001 - \$500,000	O = \$500,001 - \$1,000,000	P = \$1,000,001 - \$5,000,000	P1 = \$5,000,001 - \$25,000,000	P2 = \$25,000,001 - \$50,000,000
3. Value Method Codes	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash Market	
(See Column C2)	U = Book Value	V = Other	W = Estimated		

**FINANCIAL DISCLOSURE REPORT**  
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Name of Person Reporting	Date of Report
Barkow, Rachel E.	04/15/2013

**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.** *(Indicate part of report.)*

**FINANCIAL DISCLOSURE REPORT**

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Name of Person Reporting	Date of Report
Barkow, Rachel E.	04/15/2013

**IX. CERTIFICATION.**

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: **s/ Rachel E. Barkow**

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
Suite 2-301  
One Columbus Circle, N.E.  
Washington, D.C. 20544

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		38	303	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities - see schedule	1	395	984	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable - see schedule		285	133
Real estate owned - vacation home		480	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		60	000				
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		285	133
				Net Worth	1	689	154
Total Assets	1	974	287	Total liabilities and net worth	1	974	287
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

**FINANCIAL STATEMENT****NET WORTH SCHEDULES**

<u>Listed Securities</u>	
CREF Bond Market Fund	21,330
CREF Global Equities Fund	45,644
CREF Growth Fund	44,446
CREF Stock Fund	68,457
Janus Global Technology Fund	3,514
TIAA Real Estate Fund	44,216
TIAA Traditional Fund	5,412
Vanguard 500 Index Fund	54,050
Vanguard Equity Income Fund	85,285
Vanguard GNMA Fund	58,531
Vanguard Intermediate-Term Bond Index Fund	36,518
Vanguard Intermediate-Term Tax Exempt Fund	74,079
Vanguard Mid-Cap Index Fund	59,823
Vanguard Moderate Growth Portfolio -529	64,551
Vanguard New York Tax-Exempt Money Market Fund	24,462
Vanguard Prime Money Market Fund	48,852
Vanguard Target Retirement 2040 Fund	116,297
Vanguard Total Bond Market Index Fund	130,459
Vanguard Total Bond Market Index Fund – Annuity	47,993
Vanguard Total International Stock Index Fund	58,959
Vanguard Total Stock Market Index Fund	303,106
Total Listed Securities	<u>\$1,395,984</u>



AFFIDAVIT

I, Rachel Elise Barkow, do swear  
that the information provided in this statement is, to the best  
of my knowledge, true and accurate.

April 16, 2013  
(DATE)

RL BL  
(NAME)

Gail Thomas  
Notary Public State of New York  
No. 010N0066334  
Qualified in Richmond County  
Commission Expires September 23, 2014

Gail Thomas  
(NOTARY)  
04/16/2013

Senator FRANKEN. Well, great. I guess I am it, so, Professor Barkow, how is Nate doing?

Ms. KAPLAN. He is wonderful.

Senator FRANKEN. Oh, good. Okay. Anyway, Judge Pryor and Professor Barkow, the United States has five percent of the world's population and approximately 25 percent of its inmates. At the federal level, since 1980, the prison population has grown from 25,000 to 218,000. That is a real problem not only for the people who may be serving unnecessarily long sentences for nonviolent offenses but also for taxpayers and for the criminal justice system.

Incarceration is expensive, as you know, and this puts a real burden on corrections officers and prison officials. Each of you has written about this.

Professor Barkow, you wrote that, "The prison population is rising, and unless some sentencing laws are reconsidered, overcrowding is not going away."

And, Judge Pryor, you wrote that there is "a regime of explosive growth in the prison population."

Judge Pryor and Professor Barkow, could each of you elaborate on this problem and discuss your views about federal sentencing reform?

Judge PRYOR. I would be happy to start. It is certainly one of the responsibility of the Commission to report back to Congress on the cost-effectiveness of the sentencing regime that we have.

I do not have any particular perspective right now of what the answer to the problem is. I do know, though, that the Commission is afforded the opportunity of collecting a lot of data and assisting any legislative branch when you have a sentencing guideline system of ensuring that we can make the system as cost-effective as possible. It is one of the virtues, particularly at the State level. State sentencing commissions have been instrumental in many States who have faced challenges with explosive prison population growth, in containing those costs and having better fiscal planning. But ultimately the Commission can only do a lot of what Congress wants to be done, and we can report back and give you the right kind of data. But the balancing of the costs and benefits of the sentencing regime we have really is, at the end of the day, something that has to be done by Congress.

Ms. BARKOW. So I agree with Judge Pryor, and I would just echo the fact that States are really focused on these fiscal concerns, and I have written about the fact that I think they have a lot to offer in terms of models and ideas about reining in costs while making sure that we still have an effective crime-fighting strategy. And I think, you know, we can learn a lot from them. I think the Commission's role is to provide Congress with that information so that Congress can assess how it would like to proceed on that basis.

But I do see the Commission's role, and if I were fortunate to be on it, as being a provider of the best possible information, and I think sentencing, you have to focus on fiscal costs, even if it were not the kind of fiscal environment that we are in, but particularly now, I think it is really important to pay attention to.

Senator FRANKEN. Let me dig a little deeper on this, and, Judge Pryor, there are probably lots of areas on which you and I do not

agree, but one view I think we do share is that incarceration is not always the right answer in every criminal case.

Judge PRYOR. Right.

Senator FRANKEN. I have long supported drug courts and mental health courts, for example. Those courts provide treatment and intensive supervision in appropriate cases.

When you were Alabama's Attorney General, you pushed for the creation of a State sentencing commission, and you wrote that this commission was needed to fix "a system of corrections that offered a few"—I am sorry—"a system of corrections that offered few alternatives to incarceration as a form of punishment." Can you talk a bit about what you meant by that?

Judge PRYOR. Sure.

Senator FRANKEN. And also discuss your view about the role of mental health courts and drug courts.

Judge PRYOR. Yes, Senator. Alabama has been plagued for decades with overcrowding litigation and other kinds of civil rights litigation, institutional litigation, challenging the conditions of confinement that exist in the Alabama prisons. The State has typically been among the top 10 in the country in terms of incarceration rates, and it was long my view as Attorney General from the beginning, really, that it was a system, an indeterminate sentencing system, importantly, that Alabama really could not afford to maintain and that too often we were incarcerating lower-risk offenders who would be more effectively punished with alternatives to incarceration. Drug courts were one of the answers in the array of sentencing alternatives that I was hoping that the commission and our legislature could help us create, mental health courts as well, community corrections programs.

We had some jurisdictions in our State—Mobile was particularly known for its really a model community corrections program. One of our best drug courts was in Jefferson County in the Birmingham area. But we did not have those kinds of programs throughout the State, and as a result, sentencing judges really were left with few alternatives to incarceration. And our data, once the commission started its work, showed that time and again we were sending to prison the lower-risk offenders, and that that is where the prison growth problem really existed.

If we could provide those alternatives to incarceration that, frankly, are more effective forms of punishment from any of those offenders, then I thought we could resolve a lot of the problems that we have historically had and help the Department of Corrections and others plan better for the future.

Senator FRANKEN. And these are cases where the arresting officer and the judge and the prosecutor and the defense attorney and the corrections system say this person really does not belong in prison or should go to either mental health court or drug court and maybe should be diverted into a treatment program rather than us crowding our prisons with someone who is actually going to be harmed by going and it is not going to help anyone for them to go to prison.

Judge PRYOR. No, in fact, in many cases they would go to prison, which I often described as a "graduate school for criminal activity."

They would, in many cases, go into that revolving door and come out far more dangerous than when they went in.

Senator FRANKEN. In some cases, it is an undergraduate program because they really—

Judge PRYOR. Right. That is right.

Senator FRANKEN. Okay. I am over my time already, but I do want to ask a question of Ms. Campbell-Smith and Ms. Kaplan. It is somewhat customary for this Committee to ask nominees to describe their judicial philosophies. I take this to mean the approach you will take when deciding close cases, cases where the law is not quite clear or the evidentiary record is disputed. So I would like to give each of you just a chance to answer that question and tell the Committee a bit about your approach to judging.

Ms. CAMPBELL-SMITH. Thank you kindly. I believe that I would be fair-minded, even-tempered, decisive. Among the personal qualities that would assist me in examining cases and deciding: a careful reader, a good listener, mindful and familiar of the governing law pertinent to a case, acquainting myself closely with the particular facts of a case, and prepared to follow the governing precedent in any case.

Senator FRANKEN. Ms. Kaplan.

Ms. KAPLAN. Yes, I would agree with what Ms. Campbell-Smith said in terms of the qualities of a good judge and with respect to close cases, in any case, you always have to look to the precedent that governs and apply that faithfully and do the best job that you can with impartiality and fairness to both parties, and transparency.

Senator FRANKEN. Okay. Thank you. Thanks again to all of you.

I see that Senator Sessions is here, but I do turn to the Ranking Member. I know that Senator Sessions, Senator Grassley, probably has something nice to say—I am assuming it is nice—about Judge Pryor. Am I right?

Senator SESSIONS. I would be glad to.

Senator FRANKEN. Well, Senator Sessions.

Senator SESSIONS. Judge Pryor at one time was my lawyer, and I did not go to jail. And we won every lawsuit I think he handled. I should have given him some more.

Senator FRANKEN. Now, what were you accused of?

[Laughter.]

Senator SESSIONS. Judge Pryor is dedicated to public service. After graduating magna cum laude from Tulane where he was editor in chief of the *Law Review*, he began his career as a clerk to Judge John Minor Wisdom on the old Fifth Circuit. Those who know that John Minor Wisdom was a great, great justice who played a leading role in civil rights changes that occurred in the South over a long period of time.

After his clerkship, he entered private practice in Birmingham and then took a position as my lawyer in the Attorney General's office. I was proud to say that I could see immediately his extraordinary intellect, his incomparable legal skills, and dedication to the rule of law and doing the right thing.

I was proud to see the Governor appoint him to succeed me as Attorney General. That was perhaps the best thing the Governor

ever did. And he was one of the most respected Attorney Generals in the country.

I was pleased when President Bush nominated him to the Eleventh Circuit and to see him confirmed, and I am grateful to President Obama for nominating him to serve on the Sentencing Commission.

As Attorney General, he led the charge for sentencing reform in Alabama, and advocates on all sides applauded his efforts in truth in sentencing and other changes. His background and experience in this area make him uniquely well suited to serve on the Sentencing Commission and will help ensure that the system works properly. He is a man of integrity, decency, and good will who understands the rule of law.

Bill Baxley, a mutual friend, a former Democratic Attorney General of Alabama, and who prosecuted a number of early important civil rights criminal cases, said this about Bill Pryor: "In every difficult decision he has made, Judge Pryor's actions were supported by his interpretation of the law without race, gender, age, political power, wealth, community standard, or any other competing interest affecting his judgment." I think those are the character traits that have guided Judge Pryor throughout his life and career, the same qualities that will allow him to provide good leadership to the Sentencing Commission and valuable insight into what is just, fair, and lawful in America.

So I am pleased the President has seen fit to nominate Judge Pryor, and I know he will be committed to trying to improve our criminal justice system.

And I would say one thing, Mr. Chairman. As I understand it, Judge Pryor would probably know the numbers, but about 98 percent now of people who are indicted in federal court end up being convicted. So the question is: What is your sentence going to be? That is the real question in most of these cases. What is the appropriate punishment? Because the conviction rate is extraordinarily high and the guilt plea rate is extraordinarily high.

So I think it is important, since Congress, through the Sentencing Guidelines, has basically interjected itself into the sentencing process to a degree that had never happened before 1980, and so the Sentencing Commission makes recommendations to us. And we should look at those recommendations, and we should consider changes, because the world changes. And we learn more about why people commit crimes and how they commit crimes and who recidivates and who does not recidivate. And having this Commission engaged in that is important, and we, Mr. Chairman, should stay in closer touch with them, really. And when they make suggestions, we may not agree, but we should consider them on some sort of more regular basis.

I am proud of the Commission. I think over the years they have served a good purpose. I think they have reduced disparity in sentencing, have consistency in sentencing, but there is always room for improvement.

Thank you for giving me this time.

Senator FRANKEN. Thank you, Senator Sessions.

Senator Grassley.

Senator GRASSLEY. I am going to put a statement in the record and some letters.

Senator FRANKEN. Without objection.

[The prepared statement of Senator Grassley appears as a submission for the record.]

Senator GRASSLEY. I am going to start with Ms. Campbell-Smith and ask two questions at one time, because the first one is a very general question about your making the transition from being Special Master to being judge. And then, second, because it is my understanding you deal almost exclusively with claims for damages resulting from government-compelled childhood vaccinations, the Court of Claims adjudicates a heck of a lot of other things. Five of them I have got listed here. There are probably a lot more. They extend from going from master to being a judge, the experience you have in these other areas within the jurisdiction of the Court of Claims and explain your preparation to assume the adjudicative functions of the diverse area that the Claims Court handles.

Ms. CAMPBELL-SMITH. Thank you kindly for your question. Good afternoon to you, Senator Grassley.

I am currently sitting as a judicial officer with the Office of Special Masters to put the office's—you have identified the jurisdiction, but to put it into scope, into the context of the Court of Federal Claims, it is now a 25-year-old statutory creation that is part of the Court of Federal Claims and does, in fact, consider an aspect of the court's jurisdiction. I have been sitting as a judicial officer and have presided over and issued more than 1,600 decisions in my tenure, seven-year tenure as a Special Master.

Prior to that time, I served as a career law clerk to the now-chief judge of the court, Emily Hewitt, and in that capacity I became very familiar with the areas of jurisdiction, from takings to bid protest, Indian claims, confidential informant types of cases, some of the pay cases that came before the Court of Federal Claims. So I have had an opportunity to become familiar with the areas of jurisdiction. And prior to that I have served as a judicial law clerk, federal judicial law clerk, to three other federal judges and have had an opportunity to become familiar with federal court practice from within the judiciary.

Have I adequately answered your question?

Senator GRASSLEY. Yes, that is adequate. And for all of you, I am not going to ask all my questions orally, so some of them will be in writing. And I am sure you will answer them.

In the case of Ms. Kaplan, I would like to have you explain the role that you took in the case of *Berry v. Conyers*. I believe you were General Counsel at OPM, and while the Department of Justice represents the agencies in court, what was your input on developing the legal strategy, writing briefs, and otherwise overseeing that effort? And you were listed as Of Counsel on the brief for the Department of Justice officials. Would you describe your input on that document?

Ms. KAPLAN. Thank you, Senator Grassley. I appreciate the question. I understand the question, because I know it is an important case. Unfortunately, because the case is a live case and it is actually about to be heard by the Federal Circuit at the end of the

month, I really am not free to talk about the case in this setting. So I apologize for that, but I do understand your inquiry.

Senator GRASSLEY. I am not asking you—I do not think my question was asking you to comment—your input into it. You cannot comment on your input into it?

Ms. KAPLAN. Well, I guess what I could tell you generally is the way that it works. I represent or I advise the Director of the Office of Personnel Management, and when a decision is made whether to take a case to the Court of Appeals for the Federal Circuit, I will advise the Director. The Director will then on occasion, especially in a case that involves sort of governmentwide equities, may take into consideration the views of other agencies and then will bring in the Justice Department to talk about what the appropriate position is to take and then may make a decision to file an appeal. My role in that is as the Director's attorney.

Senator GRASSLEY. Mr. Pryor, what agenda will you bring to the Commission, and what do you hope to accomplish as a result of your service on the Commission?

Judge PRYOR. Thank you, Senator, for that question. I do not think that I bring an agenda to the Commission. I hope that I bring relevant experience to the work of the Commission, which is a collegial body and has traditionally worked in a consensus fashion. And it is my—I am committed to the goals of the Sentencing Reform Act that created the Commission in the first place. I think that that has been an improvement for the federal judiciary and for the federal sentencing system. I agree with the perspective that Judge Marvin Frankel had expressed more than 40 years ago in criticizing the arbitrariness that had previously existed and the indeterminate sentencing system that we had in the federal judiciary. The title of his book about that subject was "Law Without Order," and I think that that was a fair description of how sentencing worked at one time.

I am committed to what the Sentencing Reform Act has made the charge of the Sentencing Commission and its responsibility in developing guidelines that provide more fairness and rationality in sentencing and that assists Congress in the role that it has to play in overseeing that process.

Senator GRASSLEY. Ms. Barkow, what, in your opinion, is the proper relationship between Congress and the Sentencing Commission in the development and implementation of national criminal policy?

Ms. BARKOW. So, Senator, I think that the policy belongs with Congress, and the Sentencing Commission's role is to help Congress to perform that task. So Congress sets what the sentences are and broad parameters and all of the policy decisions are with Congress. And the Sentencing Commission is an agency that is there to assist Congress in implementing the vision that Congress sets.

So I believe the Commission's role is to provide data, to provide information. If Congress wants reports or any other additional information that would help it set sentencing policy, that is the Commission's role. It is there as an administrative agency to administer the laws that Congress passes.

Senator GRASSLEY. Thank you, Mr. Chairman.

Senator FRANKEN. Thank you, Senator.

That concludes—no, I am sorry. Senator Sessions, would you like to ask some questions in addition?

Senator SESSIONS. Ms. Barkow, I see you clerked for Justice Scalia. Congratulations.

Ms. BARKOW. Thank you.

Senator SESSIONS. I am not sure he would agree with that statement about Congress' role in sentencing. There is a tension there. I remember when the Sentencing Guidelines were first passed, Judge Tjoflat at the Eleventh Circuit told the fellow judges, "Gentlemen, the Congress does not trust you to sentence." So Congress did—and literally you would have in a courthouse a bank robber, and he would get probation if he went before one judge and get 20 years in jail if he went before another judge. Literally. I have seen that. So it did improve.

I guess a question following up on Senator Grassley's comment. You do recognize that it is legitimate for Congress to grant this power, and if you sit on the Commission, that you would try to use that power wisely and consistent with the previous history of how the Commission functions? Or do you have any doubts about that?

Ms. BARKOW. No, absolutely, I believe it is the role of the Commission to be there to assist Congress in its central task as the body that sets statutory sentences for people.

Senator SESSIONS. You know, literally, in the past you would go to sentencing, and the idea is you have to prove everything beyond a reasonable doubt, a judge, I think is unrealistic. People would come before a judge, and the preacher would pray for the defendant, and the Mama would cry, and the victim would say something, and the judge would impose a sentence without any reference to any consistency, just how he felt that day, what he felt about it. And sometimes those were good sentences that got rendered, but I think Congress made a better decision. And if your Commission functions well, I think we can have more uniformity, more consistency, and be less likely to have unjust sentences.

I thank you for your willingness to serve, and I thank all of you.

Senator FRANKEN. Thank you, Senator Sessions.

I would like once again to congratulate all the nominees and your families and your friends who are here and/or watching.

We will hold the record open for one week for submissions of questions for the witnesses and other materials. This hearing is now adjourned.

[Whereupon, at 3:04 p.m., the Committee was adjourned.]



**Statement of Senator Charles Grassley  
Ranking Member  
Committee on the Judiciary  
United States Senate**

**Before the Committee on the Judiciary**

**On the Nominations of:**

*Patricia E. Campbell-Smith, to be a Judge of the United States Court of Federal Claims*

*Elaine D. Kaplan, to be a Judge of the United States Court of Federal Claims*

*William H. Pryor, Jr., to be a Member of the United States Sentencing Commission*

*Rachel Elise Barkow, to be a Member of the United States Sentencing Commission*

**May 8, 2013**

**Mr. Chairman,**

I join you in welcoming the nominees who are here today with their families and friends.

On today's agenda we have two nominations for the United States Court of Federal Claims and two nominations for the United States Sentencing Commission. Both of these organizations are important in our judicial system.

The Court of Claims, while not an Article III Court, is critical to our legal system. The Court describes its mission as follows: The Court of Federal Claims is authorized to hear primarily money claims founded upon the Constitution, federal statutes, executive regulations, or contracts, express or implied-in-fact, with the United States. The Court has equitable jurisdiction in the area of bid protests, as well as jurisdiction in vaccine compensation.

One of our nominees today, Ms. Patricia E. Campbell-Smith, is well versed in the operations of the Court of Claims, having been affiliated with the Court since 1998. Presently, she serves as a Chief Special Master. In this capacity she has heard decided thousands of vaccine injury claims.

Also nominated to the Court of Federal Claims is Ms. Elaine Kaplan. She presently serves as Acting Director of the Office of Personnel Management, having previously served as General Counsel at OPM and as head of the Office of Special Counsel.

I would note that Ms. Kaplan is involved in a case which gives me great concern, namely *Berry v. Conyers*. This case, according to the current Special Counsel, Carolyn Lerner, if upheld in court, “would undermine Congress’ repeated efforts to strengthen whistleblower and other good government protections for federal workers.” Lerner added that “it could also limit OSC’s jurisdiction to investigate allegations of whistleblower reprisal for hundreds of thousands of federal employees.”

I will have a number of questions related to that matter, some of them I will submit in writing. I will also place into the record two letters regarding her nomination.

In addition to the Court of Federal Claims, we have nominees for the U.S. Sentencing Commission. Judge Pryor is a United States Circuit Judge for the Eleventh Circuit. Judge Pryor is recognized as a extremely qualified and capable jurist.

Of particular note, in relation to this nomination, he has a long and distinguished record on sentencing issues. As Alabama's Attorney General, he led the effort for sentencing reform.

Judge Pryor has practical experience as a judge on sentencing, having participated in the adjudication of hundreds of federal appeals of criminal convictions and sentences and the collateral review of hundreds of state convictions and sentences.

In addition, Judge Pryor has contributed to the body of research and scholarship on sentencing reform.

The Committee has received a number of letters in support of his nomination, which I will include in the record, but wanted to note just a few items.

John Hall, an Alabama attorney, who served on the National Democratic Party Platform Committee, wrote: "In summary, as an active Democrat, I have worked with Judge Pryor firsthand, and watched his non-partisan approach and willingness to work with leaders of both political parties to seriously address the issues of Sentencing Reform. I wholeheartedly endorse Bill Pryor for this very important position."

Rosa Davis, an Assistant Attorney General, a self-proclaimed Democrat, and appointed to serve on the Alabama Sentencing Commission stated: "I recommend the confirmation of Judge Pryor because my experience working with him on sentencing issues has allowed me to personally observe his commitment to fair, honest and rational sentencing."

William Baxley, former Democratic Attorney General of the State of Alabama, wrote, speaking of Judge Pryor: "He has served as a U.S. Circuit Judge throughout the evolution of federal sentencing guidelines from mandatory to discretionary, and has been exposed to every extreme of sentencing imaginable, and has struck a fair and equitable chord within every Eleventh Circuit panel upon which he has served. Application of wisdom of this nature to the complex variety of issues that must be addressed by the [Sentencing Commission] in the discharge of its duty to the United States is critical to its mission. There is no better choice to accomplish this goal than Judge Bill Pryor."

Other letters of support are from Seth Hammett, a Democrat, and Speaker Emeritus of the Alabama House of Representatives, and the Chair of the Alabama Sentencing Commission, Joseph Colquitt.

Our second nominee to the Commission, Ms. Rachel Barkow, serves as the Segal Family Professor of Regulatory Law and Policy at the New York University School of Law. She has written extensively on sentencing issues, on the Commission, and on the Guidelines.

While I might take issue with some of her assertions and conclusions, I respect the fact that she has taken a serious look at many of the issues which face the Sentencing Commission. If confirmed, she will bring a viewpoint that I suspect will make for vigorous debate and careful analysis.

Again, I welcome the nominees, their families and guests. I look forward to the testimony and to the responses to my questions which I will ask today as well as those which I will submit in writing.

**Senator Chuck Grassley  
Questions for the Record**

**Rachel E. Barkow  
Nominee, Member of the United States Sentencing Commission**

1. Statistics compiled by the U.S. Sentencing Commission suggest that the rate of sentences imposed below the guideline range has risen post-*Booker*. (Not including government sponsored sentences below range, such as those where the defendant receives credit for substantial assistance.) For instance, according to the Commission's 2010 Annual Report, a national comparison of sentences shows that district court judges imposed sentences below the guidelines range approximately 18% of the time. That is nearly four times as many below range sentences than were reported for fiscal year 2005, when the percentage was 4.3%. *Booker* was decided in January of 2005.
  - a. Do you believe there is cause for concern over the rise in below range sentences, and the sentencing disparities that will necessarily accompany this rise?
  - b. Do you believe that Congress should consider statutory reform that would create a binding but constitutional system?
2. According to the United States Sentencing Commission's 2010 Annual Report, the offense type with the highest within-guideline sentencing range was simple drug possession, with 94.9% of such cases resulting in a within-guidelines sentence. Manslaughter had the highest rate of above-range sentences based on *Booker*, at 10.9%. Conversely, child pornography offenses had the highest rate of below-range sentences, at 42.7%.
  - a. I understand that many of these cases may have involved a government-sponsored departure, but do you think it is possible that the beliefs of judges about the nature and seriousness of particular offenses might be playing a role in the rates of above and below range sentencing, post-*Booker*?
  - b. If not, what do you think explains this variance by offense?
3. Legal scholars generally recognize four purposes for imposing criminal sentences: retribution, incapacitation, rehabilitation and deterrence. Sometimes, these purposes may contradict one another. When such situations arise, the different purposes must be prioritized.
  - a. If deterrence and rehabilitation were in conflict such that both could not be emphasized equally, which would you emphasize in determining an appropriate sentencing range?
  - b. If you would emphasize rehabilitation, what effect do you think that emphasis might have on potential future offenders?
4. Do you believe that mandatory minimum sentences are more likely to deter certain types of crime than discretionary or indeterminate sentencing?



5. In your scholarly work, you have criticized the Sentencing Commission because of its susceptibility to political control by Congress and the Executive Branch and resistance to embrace the advice of experts. Do you still feel that way? If confirmed, how would you seek to counteract or reduce that influence?
6. You've noted that the actual makeup of the Commission since its inception has made it resolutely pro-prosecution or "tough on crime." Do you still feel that way, and if so, could you elaborate, specifically addressing how you as a commissioner would work with your colleagues on this issue?
7. In your opinion, who is responsible for developing national criminal policy?
8. In your published works, you have criticized the Sentencing Commission's Guidelines as being far too complex to be practically useful. If confirmed, what steps would you take to simplify the Guidelines system? What results would you hope to achieve?
9. You have previously indicated that noncapital life sentences without the possibility of parole are likely cruel and unusual punishment under the Eighth Amendment.
  - a. Who decides the meaning and scope of the Eighth amendment?
  - b. If confirmed, would you seek to reform the Supreme Court's existing death penalty jurisprudence?
10. One of the strongest criticisms of the criminal justice system that you have articulated attacks the power sentencing guidelines and mandatory sentences afford federal prosecutors in their efforts to avoid trial by retaining guilty pleas. Is that a problem remediable by the Sentencing Commission? Is there a way to remediate what you describe as a problem through the powers vested in the Commission by statute, or would it venture into actual policy-making to reach your desired goals?

**Senator Chuck Grassley  
Questions for the Record**

**Patricia E. Campbell-Smith  
Nominee, Member of the United States Sentencing Commission**

1. Perhaps in your Special Master experience, you've encountered cases where a plaintiff is denied relief and your sense of justice feels undermined because of the constraints imposed by statute or precedent. As a Federal Claims Judge, when balancing a plaintiff's interest in obtaining justice with limits imposed by statute or precedent, how would you decide?
2. In your view, are there particular challenges facing the Court of Claims? Do you see any areas where improvement is needed?

**Senator Chuck Grassley  
Questions for the Record**

**Elaine D. Kaplan  
Nominee, Judge for the U.S. Court of Federal Claims**

1. Would you please comment on how you will transition from being an advocate to being a Judge?
2. The Court of Federal Claims adjudicates cases across a broad range of subject matters.
  - a. What experience do you have in the following:
    - i. tax refund suits
    - ii. takings cases
    - iii. government contracts
    - iv. contract claims
    - v. other claims that come before the Court?
  - b. Would you explain why you feel you are prepared to assume an adjudicative function over these many diverse areas of law?
3. In various LGBT conferences or roundtable discussions you have stated that while many significant reforms would require legislative action, there can be important incremental changes through administrative action. In fact, you took such action as Special Counsel – interpreting civil service law to cover LGBT employees. That action was later reversed by your successor. My question is, as a judge will you continue that type of advocacy, looking for ways where changes can be made through judicial action?
4. At a Speaker Series event hosted by the Department of the Treasury and again at the MSPB Staff Conference, you stated, “With my background, as you might imagine, when I got to OPM, I thought that I would find a bunch of people with horns, who lived only to strip employees of their rights, deny widows and orphans their benefits, and help management smash labor. I WAS DEAD WRONG.” I understand you were obviously exaggerating, and I give you credit for admitting you were wrong. However, this characterization raises concerns about how you may view individuals or organizations with different ideological viewpoints. What assurances can you give to the Committee that you will not pre-judge parties who might come before you?
5. A large category of cases for the Court of Claims involve civilian and military pay questions. As a union lawyer, you made statements that “pay is usually a political football.”
  - a. If confirmed, will you be able to make unbiased decisions regarding pay cases?
  - b. Are there other subject matter areas that are within the court’s jurisdiction that you would consider to be a political football? If so, how would you approach such cases?

Questions on Whistleblower Protections:

Whistleblowers play an important role in the Federal Government and in business and industry. They risk a great deal to come forward and uncover wrongdoing, waste, fraud and abuse. Oftentimes, whistleblowers face significant retaliation or retribution, both overtly and covertly, from their employers.

You served as the Special Counsel investigating prohibited personnel practices undertaken against federal government employees who made protected disclosures under various whistleblower statutes. Conversely, you are now Acting Director of the United States Office of Personnel Management and were previously employed as its General Counsel – the office in the Federal Government representing the various Departments and offices of the Federal Government against whistleblowers. You also worked for the National Treasury Employees Union, an organization that advocates on behalf of Federal Government employees—including a number of employees that have been retaliated for protected whistleblowing. Accordingly, you have served on both side of litigation both for and against whistleblowers.

1. Do you support federal whistleblower laws?
2. Please describe in detail any and all involvement you may have had with the Office of Personnel Management opposing federal government whistleblowers who claimed they were subject to prohibited personnel practices after making protected disclosures.
3. Do you believe that any worker employed by any agency dealing in national security matters, without regard to the existence of the worker's access to confidential information or security clearance, should be precluded from:
  - a. Bringing whistleblower complaints before Congress? Please explain why or why not.
  - b. Appealing adverse actions taken against them? Please explain why or why not.
4. May an employee be exempted from having a right to appeal an adverse action if that employee's position is designated as national security sensitive (or any other applicable status subject to exemption under CSRA or otherwise) when that designation was made before the adverse action was taken?
5. May an employee be exempted from having a right to appeal an adverse action if that employee's position is designated as national security sensitive (or any other applicable status subject to exemption under CSRA or otherwise) when that designation was made after the adverse action was taken?
6. What role do national security interests play in exempting an adverse action from appeal?
7. Are employees in non-intelligence positions exempted from a right to appeal adverse actions? Why or why not.

8. Do low-level employees working for the Department of Defense with no access to classified information and having no security clearance have a right to appeal the merits of an adverse action taken against their employment status?
9. What are the differences between a federal employee with no access to classified information and no security clearance who works for an agency dealing in national security matters and a federal employee with no access to classified information and no security clearance who works for an agency completely divorced from national security?
  - a. Considering any stated differences, should these two employees be subject to different rights to appeal adverse actions taken against their employment status? Why or why not?

**Senator Chuck Grassley  
Questions for the Record**

**William H. Pryor, Jr.  
Nominee, Member of the United States Sentencing Commission**

1. Why do you want to serve on the Sentencing Commission?
2. What unique skills, perspective or experience will you bring to the Commission – what do you hope to contribute?
3. According to the United States Sentencing Commission's 2010 Annual Report, the offense type with the highest within-guideline sentencing range was simple drug possession, with 94.9% of such cases resulting in a within-guidelines sentence. Manslaughter had the highest rate of above-range sentences based on *Booker*, at 10.9%. Conversely, child pornography offenses had the highest rate of below-range sentences, at 42.7%.
  - a. I understand that many of these cases may have involved a government-sponsored departure, but do you think it is possible that the beliefs of judges about the nature and seriousness of particular offenses might be playing a role in the rates of above and below range sentencing, post-*Booker*?
  - b. If not, what do you think explains this variance by offense?
4. Legal scholars generally recognize four purposes for imposing criminal sentences: retribution, incapacitation, rehabilitation and deterrence. Sometimes, these purposes may contradict one another. When such situations arise, the different purposes must be prioritized.
  - a. If deterrence and rehabilitation were in conflict such that both could not be emphasized equally, which would you emphasize in determining an appropriate sentencing range?
  - b. If you would emphasize rehabilitation, what effect do you think that emphasis might have on potential future offenders?
5. Do you believe that mandatory minimum sentences are more likely to deter certain types of crime than discretionary or indeterminate sentencing?
6. As a sitting federal judge, you have participated in the adjudication of hundreds of federal appeals of criminal convictions. Would you please describe how this experience will aid you on the Commission?

**Questions for the Record**

Hearing: Nominations

May 8, 2013

Submitted by Senator Amy Klobuchar

**Questions for Rachel Elise Barkow, nominated to be a Member of the United States Sentencing Commission**

- Part of your role on the Sentencing Commission would be serving as a resource of information for all branches of government, criminal justice practitioners, the academic community, and the public.
  - What would you do to ensure that critical new research and updated information is getting to each of these different groups? How will you incorporate input from these parties into the Commission's policies?

**Questions for the Record**

Hearing: Nominations

May 8, 2013

Submitted by Senator Amy Klobuchar

**Questions for Patricia E. Campbell-Smith, to be a Judge of the United States Court of Federal Claims:**

1. If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?
2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?
3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?



**Questions for the Record**

Hearing: Nominations

May 8, 2013

Submitted by Senator Amy Klobuchar

**Questions for Elaine D. Kaplan, nominated to be a Judge of the United States Court of Federal Claims:**

1. If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?
2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?
3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?

**Questions for the Record**

Hearing: Nominations

May 8, 2013

Submitted by Senator Amy Klobuchar

**Questions for William H. Pryor, Jr. nominated to be a Member of the United States Sentencing Commission**

- Part of your role on the Sentencing Commission would be serving as a resource of information for all branches of government, criminal justice practitioners, the academic community, and the public.
  - What would you do to ensure that critical new research and updated information is getting to each of these different groups? How will you incorporate input from these parties into the Commission's policies?

**Senator Chuck Grassley  
Questions for the Record**

**Rachel E. Barkow  
Nominee, Member of the United States Sentencing Commission**

1. Statistics compiled by the U.S. Sentencing Commission suggest that the rate of sentences imposed below the guideline range has risen post-*Booker*. (Not including government sponsored sentences below range, such as those where the defendant receives credit for substantial assistance.) For instance, according to the Commission's 2010 Annual Report, a national comparison of sentences shows that district court judges imposed sentences below the guidelines range approximately 18% of the time. That is nearly four times as many below range sentences than were reported for fiscal year 2005, when the percentage was 4.3%. *Booker* was decided in January of 2005.

- a. Do you believe there is cause for concern over the rise in below range sentences, and the sentencing disparities that will necessarily accompany this rise?

Response: The Commission's charge under the Sentencing Reform Act is to "avoid[] unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct while maintaining sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices." 28 U.S.C. § 991(b)(1)(B). It is thus the Commission's responsibility to determine the basis for those sentences that fall outside the guideline range to determine if judges are creating unwarranted disparities in the system or if judges are giving these sentences based on factors not taken into account in the Guidelines or in accordance with their responsibilities under 18 U.S.C. § 3553.

- b. Do you believe that Congress should consider statutory reform that would create a binding but constitutional system?

Response: I believe the Commission should continue to monitor judicial sentencing practices under the current non-binding system to determine if judicial sentencing practices are in accord with the purposes of the Sentencing Reform Act. If at any point it becomes apparent that there is a pervasive problem of unwarranted sentencing disparity, then the Commission should report its findings to Congress along with possible solutions and the costs and benefits of those solutions. A possible remedy to a finding of pervasive unwarranted disparity may include some type of binding system, as long as that system comports with the Constitution. Whether that option is the preferable one to address unwarranted disparities, however, would be for Congress to determine after evaluating the relative costs and benefits of all options.

2. According to the United States Sentencing Commission's 2010 Annual Report, the offense type with the highest within-guideline sentencing range was simple drug possession, with 94.9% of such cases resulting in a within-guidelines sentence. Manslaughter had the highest rate of above-range sentences based on *Booker*, at 10.9%. Conversely, child pornography offenses had the highest rate of below-range sentences, at 42.7%.

- a. I understand that many of these cases may have involved a government-sponsored departure, but do you think it is possible that the beliefs of judges about the nature and seriousness of particular offenses might be playing a role in the rates of above and below range sentencing, post-*Booker*?

Response: While it is possible, it also might be that government charging patterns or departure motions explain the difference. It might also be the case that judges are sentencing outside the Guideline range in order to comply with the requirements of 18 U.S.C. § 3553 or that the facts of individual cases consistently take a large number outside the heartland. I think it is the Commission's responsibility to analyze the underlying reasons for judicial patterns that are inconsistent with the Guidelines to determine the basis for the disagreements.

- b. If not, what do you think explains this variance by offense?

Response: Please see above.

3. Legal scholars generally recognize four purposes for imposing criminal sentences: retribution, incapacitation, rehabilitation and deterrence. Sometimes, these purposes may contradict one another. When such situations arise, the different purposes must be prioritized.

- a. If deterrence and rehabilitation were in conflict such that both could not be emphasized equally, which would you emphasize in determining an appropriate sentencing range?

Response: The main goal of an effective criminal justice system is promoting public safety, and therefore I believe that if there were an irreconcilable conflict between deterrence and rehabilitation, deterrence is the more important goal. Ideally, however, if it is possible to rehabilitate an offender, that goal should be pursued in the service of deterrence, because an offender who can be rehabilitated will also be deterred from future crime.

- b. If you would emphasize rehabilitation, what effect do you think that emphasis might have on potential future offenders?

Response: I would emphasize deterrence over rehabilitation if there were an irreconcilable conflict.

4. Do you believe that mandatory minimum sentences are more likely to deter certain types of crime than discretionary or indeterminate sentencing?

Response: Based on empirical studies, I believe that how effective a regime will be in terms of deterrence depends on many factors, including the odds that a defendant will be caught, the swiftness with which the sanction is imposed, the certainty of that sanction, and the length of that sanction. So whether a mandatory minimum sentence produces greater deterrence than a discretionary or indeterminate sentence depends on the length of the mandatory sentence as compared to the discretionary or indeterminate sentence, how likely it is that the mandatory minimum will be charged in a given case, the swiftness with which either of the sentences will be imposed, and the odds that a defendant will be caught in the first place.

5. **In your scholarly work, you have criticized the Sentencing Commission because of its susceptibility to political control by Congress and the Executive Branch and resistance to embrace the advice of experts. Do you still feel that way? If confirmed, how would you seek to counteract or reduce that influence?**

Response: I have explained in my scholarly work that, although Congress created the Commission with the goal of establishing an independent agency that would be largely insulated from politics so that it could establish sentencing guidelines based on expert information and data, the Commission has inevitably been subject to strong political oversight by Congress and the Executive Branch and the political branches have often overlooked the Commission's empirical information about sentencing. I continue to believe that is an accurate description of the Commission's relationship with the political branches. However, that descriptive account is not meant to be a criticism of political involvement in sentencing; on the contrary, I believe it is the role of the elected branches of government to set sentencing parameters. But I also believe that the purpose of having a Sentencing Commission is, as the Sentencing Reform Act explains, to provide the best available information and evidence with respect to those sentencing parameters. If the Commission's research is consistently ignored, the reasons for having a Commission are weakened. If I were confirmed, I would seek to provide Congress and the Executive Branch with data these branches need to set sound policy, including the fiscal costs of sentencing policies and whether any particular sentencing proposal would have a disproportionate impact on particular demographic groups. Ultimately, it is up to Congress and the President to enact laws that set sentencing boundaries and to decide how to use that data. But the Commission's role must be to provide the best possible information for those actors to consider and use in setting those boundaries.

6. **You've noted that the actual makeup of the Commission since its inception has made it resolutely pro-prosecution or "tough on crime." Do you still feel that way, and if so, could you elaborate, specifically addressing how you as a commissioner would work with your colleagues on this issue?**

Response: I explained in a 2005 article in the *UCLA Law Review* that the Commission's membership has leaned toward prosecution interests. In contrast, state sentencing commissions often have a more diverse membership that includes defense lawyers, members of the community, prison officials, academics, or legislators. As I explained in that article, I believe a diverse membership is helpful to a sentencing commission because

it allows a greater consideration of viewpoints in reaching its decisions, which can enhance the quality and credibility of the final decision. I continue to believe that a commission with diverse membership is preferable to one that is dominated by a single perspective. In my view, it is valuable for people from different backgrounds and with different perspectives to explore sentencing issues to reach the best possible policies based on the empirical information. If I were confirmed, I would value the perspectives of all my colleagues and listen to their points of view with an open mind and a desire to learn from them.

**7. In your opinion, who is responsible for developing national criminal policy?**

Response: I believe that Congress is responsible for developing national criminal policy through statutes.

**8. In your published works, you have criticized the Sentencing Commission's Guidelines as being far too complex to be practically useful. If confirmed, what steps would you take to simplify the Guidelines system? What results would you hope to achieve?**

Response: I continue to believe that a more simplified guideline system, similar to systems used in many states, has much to commend it. If Congress were interested in simplifying the Guidelines, and if I were confirmed, I would work with the other Commissioners to explore various models used in the states to offer Congress a range of possibilities for simplifying the federal Guidelines. In order to achieve this result, however, Congress would likely need to reconsider what is known as the "25 percent rule," contained in 28 U.S.C. § 994(b)(2), which provides that the maximum of a sentencing guidelines range for a term of imprisonment "shall not exceed the minimum of that range by more than the greater of 25 percent or 6 months." This law is one of the reasons for the complexity of the federal system because of the narrow ranges it creates.

**9. You have previously indicated that noncapital life sentences without the possibility of parole are likely cruel and unusual punishment under the Eighth Amendment.**

**a. Who decides the meaning and scope of the Eighth amendment?**

Response: The Supreme Court determines the meaning and scope of the Eighth Amendment. Although I have criticized the Court's decision to treat capital and noncapital cases differently for purposes of deciding whether they violate the Eighth Amendment, I have never stated that life sentences without the possibility of parole likely violate the Eighth Amendment. Nor have I questioned the Supreme Court as the final arbiter of the Eighth Amendment's meaning.

**b. If confirmed, would you seek to reform the Supreme Court's existing death penalty jurisprudence?**

Response: I do not believe it is the Commission's responsibility to seek to reform the Supreme Court's death penalty jurisprudence.

- 10. One of the strongest criticisms of the criminal justice system that you have articulated attacks the power sentencing guidelines and mandatory sentences afford federal prosecutors in their efforts to avoid trial by retaining guilty pleas. Is that a problem remediable by the Sentencing Commission? Is there a way to remediate what you describe as a problem through the powers vested in the Commission by statute, or would it venture into actual policy-making to reach your desired goals?**

Response: Some prosecutors' offices have sought to create checks on the exercise of discretion within their offices. Beyond such internal procedures, however, it is for Congress to decide whether to seek to alter the power balance in the federal system and provide greater checks on the exercise of prosecutorial discretion. The Commission could assist Congress, however, by providing data on how prosecutors use the guidelines and mandatory minimums and when and under what circumstances they request substantial assistance departures (and how that varies by district or offense). It would then be up to Congress to determine whether prosecutors have too much discretion and to consider various options for cabinining that discretion.

**Questions for the Record**

Hearing: Nominations

May 8, 2013

Submitted by Senator Amy Klobuchar

**Questions for Rachel Elise Barkow, nominated to be a Member of the United States Sentencing Commission**

- **Part of your role on the Sentencing Commission would be serving as a resource of information for all branches of government, criminal justice practitioners, the academic community, and the public.**
  - **What would you do to ensure that critical new research and updated information is getting to each of these different groups? How will you incorporate input from these parties into the Commission's policies?**

Response: It is a central responsibility of the Sentencing Commission to “serv[e] as a clearinghouse and information center for the collection, preparation, and dissemination of information on Federal sentencing practices.” 28 U.S.C. § 995(1)(12)(A). Were I to be confirmed, I would work with the other members of the Commission to make sure that the Commission’s research is readily accessible to all interested groups. This would include the general practice of putting the Commission’s research on the website and responding as helpfully as possible to any specific requests for information. It is essential for the Commission to make its research public so that it can obtain feedback from interested actors and engage in a dialogue that allows it to produce the highest quality information on federal sentencing practices. The Commission’s output will be best when it takes into account the input of all interested parties.



**Senator Charles Grassley  
Questions for the Record**

**Patricia E. Campbell-Smith  
Nominee, Judge of the United States Court of Federal Claims**

- 1. Perhaps in your Special Master experience, you've encountered cases where a plaintiff is denied relief and your sense of justice feels undermined because of the constraints imposed by statute or precedent. As a Federal Claims Judge, when balancing a plaintiff's interest in obtaining justice with limits imposed by statute or precedent, how would you decide?**

Response: Many of the cases that I have considered as a Special Master involve difficult injuries and compelling factual circumstances. However, the law--whether prescribed by statute or precedent--does not provide a remedy in all the cases that come before me. When evaluating claims, I study the filings, listen carefully to the testimony of the parties and their witnesses, and apply the law to the record before me to reach a decision. When the limitations of the statute and the jurisprudence do not allow the plaintiff to recover, I have found against the plaintiff and have written an opinion laying out the record and explaining the legal constraints which, in my analysis, preclude relief. If, however, the statute and the jurisprudence--when applied to the facts of the case--afford relief, I have written an opinion describing the relevant facts and the legal grounds for the plaintiff's recovery. If I am fortunate enough to be confirmed by the Senate, I will approach cases at the Court of Federal Claims in the same manner.

- 2. In your view, are there particular challenges facing the Court of Claims? Do you see any areas where improvement is needed?**

Response: Because it has been seven years since I have clerked on the Court of Federal Claims, I am not in a position to know if there are particular challenges facing the Court of Federal Claims or if there are particular areas with respect to the Court of Federal Claims in which improvement may be needed. However, based on my five years of experience as a special master, and more recently, my two years of experience as chief special master, I know that all courts face challenges in being both deliberate and efficient in their mission to deliver considered, fair, prompt and just decisions. One tool that has helped me in my judicial work so far is the use of electronic resources. If I am fortunate enough to be confirmed by the Senate, I would continue to use such tools and would be alert to identify other opportunities to assist the Court of Federal Claims in doing its important judicial work as effectively as possible.

**Questions for the Record**

Hearing: Nominations

May 8, 2013

Submitted by Senator Amy Klobuchar

**Questions for Patricia E. Campbell-Smith, to be a Judge of the United States Court of Federal Claims:**

- 1. If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?**

Response: My judicial philosophy is to apply the law consistently and impartially to the facts of the case at hand. The role of a judge is to decide cases in accordance with the law.

- 2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

Response: The judiciary remains strong when the litigants' expectation of respectful and just treatment is satisfied. In my seven years as a judicial officer, I have treated each litigant--without exception--courteously and fairly. If confirmed to serve as a judge on the Court of Federal Claims, I will continue to treat litigants in this manner.

- 3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

Response: A judge must adhere to precedent when making decisions. The decisions of the Supreme Court and the Federal Circuit are binding on the Court of Federal Claims and must be followed. I am committed to applying the law, including precedent, in each case now before me, and if I receive Senate confirmation, I will remain similarly resolved.

**Senator Chuck Grassley  
Questions for the Record**

**Elaine D. Kaplan  
Nominee, Judge for the U.S. Court of Federal Claims**

- 1. Would you please comment on how you will transition from being an advocate to being a Judge?**

Response: There is a vast difference between being an advocate on behalf of a client and being a judge. An advocate seeks ways to use reasonable, good faith interpretations of existing law to advance his client's interests. A judge, of course, must determine what the law *is* and apply it to the facts of the case in an even-handed manner. It is not the function of a judge to try to advance any agenda. I believe that I am well positioned to transition from the role of an advocate to one of a judge because I understand the difference between the two roles and I have a dedication to the rule of law.

- 2. The Court of Federal Claims adjudicates cases across a broad range of subject matters.**

- a. What experience do you have in the following:**
- i. tax refund suits**
  - ii. takings cases**
  - iii. government contracts**
  - iv. contract claims**
  - v. other claims that come before the Court?**

Response: I have decades of experience litigating cases at all levels of the federal courts, in a variety of areas of the law. I have participated in litigation on the side of the United States and on the side of individuals suing the United States. Some of the issues I have litigated involve claims for pay brought by government employees that are like those that the Court of Federal Claims frequently hears. In addition, as General Counsel at OPM, I have gained familiarity with the laws governing government contracts and contract claims; my office is responsible for advising OPM employees about the legal requirements governing contracts, and for defending OPM in bid protests and related matters. We also assist the Justice Department in litigating contract claims that are heard in the Court of Federal Claims. While I do not have any experience with respect to tax refund suits or takings cases, I have been involved in other kinds of constitutional litigation. If I were confirmed, I would take steps to rapidly bring myself up to speed in these areas of the law, just as I have quickly learned other areas of the law throughout my legal career.

- b. Would you explain why you feel you are prepared to assume an adjudicative function over these many diverse areas of law?**

Response: I believe that I am prepared to assume the role of a judge in these areas of the law because I already have substantive experience in several of the areas that come within the jurisdiction of the Court of Federal Claims, and because of my extensive experience litigating other kinds of civil cases in the federal courts during my 33-plus years of legal practice. I understand the importance of educating myself in those areas of law with which I have less familiarity (such as tax refund suits and takings cases), and I am fully prepared to take immediate steps to learn those areas of the law. Beyond that, I think I have the kind of skills and temperament that make a good judge. In particular, I would approach each dispute with an open mind, judging cases solely on the basis of the facts and evidence produced in the case and the controlling law.

3. **In various LGBT conferences or roundtable discussions you have stated that while many significant reforms would require legislative action, there can be important incremental changes through administrative action. In fact, you took such action as Special Counsel – interpreting civil service law to cover LGBT employees. That action was later reversed by your successor. My question is, as a judge will you continue that type of advocacy, looking for ways where changes can be made through judicial action?**

Response: No. As noted above, in my response to question 1, there is a vast difference between the role of an advocate and the role of a judge. It is completely inappropriate for a judge to look for ways to promote any change or agenda through judicial action. I believe in the importance of judicial restraint in that regard. The role of the judge is to be a neutral arbiter who applies the law to the facts of the case before him or her, in order to resolve that particular case in a manner that is consistent with controlling precedent, and not to promote any broader cause or agenda.

4. **At a Speaker Series event hosted by the Department of the Treasury and again at the MSPB Staff Conference, you stated, “With my background, as you might imagine, when I got to OPM, I thought that I would find a bunch of people with horns, who lived only to strip employees of their rights, deny widows and orphans their benefits, and help management smash labor. I WAS DEAD WRONG.” I understand you were obviously exaggerating, and I give you credit for admitting you were wrong. However, this characterization raises concerns about how you may view individuals or organizations with different ideological viewpoints. What assurances can you give to the Committee that you will not pre-judge parties who might come before you?**

Response: As the question notes, my remarks about my expectations of my new colleagues at OPM were exaggerated; in fact, my phraseology was intended to be humorous and self-deprecating. As I am sure my colleagues at OPM and elsewhere will attest, I am very respectful of all viewpoints; in fact, I have always believed that the best decisions are reached only after considering every possible viewpoint. I have friends and colleagues across the ideological spectrum. In addition, it bears noting that during my term as head of the Office of Special Counsel, which spanned the administrations of

Presidents Clinton and George W. Bush, I pursued meritorious cases against agencies and agency officials without regard to political or other influences, and I did not prejudice parties or cases based on ideological viewpoints or any other factor.

**5. A large category of cases for the Court of Claims involve civilian and military pay questions. As a union lawyer, you made statements that “pay is usually a political football.”**

**a. If confirmed, will you be able to make unbiased decisions regarding pay cases?**

Response: Yes. As the question notes, I made this comment in my role as advocate for the union and its federal employee members. If I were confirmed as a judge, my role would be very different and I am confident that I would be able to make unbiased decisions regarding pay cases as well as other cases, based on controlling law.

**b. Are there other subject matter areas that are within the court’s jurisdiction that you would consider to be a political football? If so, how would you approach such cases?**

Response: No. Politics has no place in the adjudication of cases by a federal court.

**Questions on Whistleblower Protections:**

**Whistleblowers play an important role in the Federal Government and in business and industry. They risk a great deal to come forward and uncover wrongdoing, waste, fraud and abuse. Oftentimes, whistleblowers face significant retaliation or retribution, both overtly and covertly, from their employers.**

**You served as the Special Counsel investigating prohibited personnel practices undertaken against federal government employees who made protected disclosures under various whistleblower statutes. Conversely, you are now Acting Director of the United States Office of Personnel Management and were previously employed as its General Counsel – the office in the Federal Government representing the various Departments and offices of the Federal Government against whistleblowers. You also worked for the National Treasury Employees Union, an organization that advocates on behalf of Federal Government employees—including a number of employees that have been retaliated for protected whistleblowing. Accordingly, you have served on both side of litigation both for and against whistleblowers.**

**1. Do you support federal whistleblower laws?**

Response: Yes. I have been a long-time and vocal supporter of the importance of providing protection to federal whistleblowers. I have represented whistleblowers, both when I worked

at the National Treasury Employees Union and in private practice with Bernabei and Katz. I aggressively pursued whistleblower retaliation claims when I was the head of the Office of Special Counsel. In fact, I have written and testified before Congress in support of strengthening the federal whistleblower protection laws and in support of enhanced funding for the Office of Special Counsel. I have also spoken at conferences both domestically and internationally about the importance of whistleblower protection laws to good government. Finally, I was a member of the team within the current Administration that worked with Congressional staff and good government groups on the legislation that ultimately became the Whistleblower Protection Enhancement Act.

- 2. Please describe in detail any and all involvement you may have had with the Office of Personnel Management opposing federal government whistleblowers who claimed they were subject to prohibited personnel practices after making protected disclosures.**

Response: I would like to clarify that it is not OPM's role to provide representation to government agencies in cases against whistleblowers. Instead, OPM has the authority to seek judicial review of decisions of the Merit Systems Protection Board ("MSPB" or "the Board"), "if the Director determines, in the discretion of the Director, that the Board erred in interpreting a civil service law, rule, or regulation affecting personnel management and that the Board's decision will have a substantial impact on a civil service law, rule, regulation, or policy directive." 5 U.S.C. § 7703(d). Thus, the Director of OPM is not charged with defending federal agencies against whistleblower claims; he or she is charged with seeking review of decisions that are inconsistent with civil service laws and that would have a negative impact on such laws.

During my time with OPM, I am not aware of any cases in which I was involved where OPM took a position in opposition to a federal government whistleblower who claimed that they were subjected to prohibited personnel practices.

- 3. Do you believe that any worker employed by any agency dealing in national security matters, without regard to the existence of the worker's access to confidential information or security clearance, should be precluded from:**

- a. Bringing whistleblower complaints before Congress? Please explain why or why not.**

Response: I do not believe that workers employed in agencies dealing with national security matters, without regard to their access to confidential information or a security clearance, may be precluded from bringing whistleblower complaints before Congress. To the contrary, the law (at 5 U.S.C. §§ 2302(b)(8); 2302(b)(13); and 7211) provides all covered employees with rights to bring whistleblower complaints to Congress without fear of retaliation.

**b. Appealing adverse actions taken against them? Please explain why or why not.**

Response: Workers employed by agencies that deal with national security matters may appeal adverse actions taken against them so long as they are within the definition of “employee” set forth at 5 U.S.C. § 7511. The Supreme Court has held, however, that the revocation or denial of a security clearance is not an adverse action that is appealable to the Board. *Department of Navy v. Egan*, 484 U.S. 518 (1988). The Court of Appeals for the Federal Circuit is currently considering whether and to what extent the rationale of *Egan* applies to preclude Board review of agency determinations that an employee is ineligible to hold a national security sensitive position. *Berry v. Conyers*, No. 2011-3207 (Fed. Cir.) (en banc). Although this issue is unlikely to come before the Court of Federal Claims, if I were confirmed, I would apply all applicable precedent to the cases before me.

- 4. May an employee be exempted from having a right to appeal an adverse action if that employee’s position is designated as national security sensitive (or any other applicable status subject to exemption under CSRA or otherwise) when that designation was made before the adverse action was taken?**

Response: This issue has not yet been resolved; it is before the Federal Circuit en banc in *Berry v. Conyers*. Although this issue is unlikely to come before the Court of Federal Claims, if I were confirmed, I would apply all applicable precedent to the cases before me.

- 5. May an employee be exempted from having a right to appeal an adverse action if that employee’s position is designated as national security sensitive (or any other applicable status subject to exemption under CSRA or otherwise) when that designation was made after the adverse action was taken?**

Response: This issue has not been resolved by the Board or by the Federal Circuit. The specific issue is not before the Federal Circuit en banc in *Berry v. Conyers*, although the court’s disposition of that case may shed light on the appropriate answer. While this issue is unlikely to come before the Court of Federal Claims, if I were confirmed, I would apply all applicable precedent to the cases before me.

- 6. What role do national security interests play in exempting an adverse action from appeal?**

Response: The Supreme Court has held that the revocation or denial of a security clearance is not an adverse action reviewable by the Board on its merits. *Department of Navy v. Egan*, 484 U.S. 518 (1988). The Court of Appeals for the Federal Circuit is currently considering whether and to what extent the rationale of *Egan* applies to agency determinations that an employee is ineligible to hold a national security sensitive position. *Berry v. Conyers*, No. 2011-3207 (Fed. Cir.) (en banc). Although this issue is unlikely to come before the Court of Federal Claims, if I were confirmed, I would apply all applicable precedent to the cases before me.

**7. Are employees in non-intelligence positions exempted from a right to appeal adverse actions? Why or why not.**

Response: Employees in non-intelligence positions are not exempted from the right to appeal adverse actions. The Supreme Court has held, however, that the revocation or denial of a security clearance is not an adverse action subject to review by the Board. *Department of Navy v. Egan*, 484 U.S. 518 (1988). The Court of Appeals for the Federal Circuit is currently considering whether and to what extent the rationale of *Egan* applies to agency determinations that an employee is ineligible to hold a national security sensitive position. *Berry v. Conyers*, No. 2011-3207 (Fed. Cir.) (en banc). Although this issue is unlikely to come before the Court of Federal Claims, if I were confirmed, I would apply all applicable precedent to the cases before me.

**8. Do low-level employees working for the Department of Defense with no access to classified information and having no security clearance have a right to appeal the merits of an adverse action taken against their employment status?**

Response: The Court of Appeals for the Federal Circuit is currently considering whether and to what extent the rationale of *Egan* applies to agency determinations that an employee (including a "low level employee[e] working for the Department of Defense") is ineligible to hold a national security sensitive position. *Berry v. Conyers*, No. 2011-3207 (Fed. Cir.) (en banc). Although this issue is unlikely to come before the Court of Federal Claims, if I were confirmed, I would apply all applicable precedent to the cases before me.

**9. What are the differences between a federal employee with no access to classified information and no security clearance who works for an agency dealing in national security matters and a federal employee with no access to classified information and no security clearance who works for an agency completely divorced from national security?**

Response: There are no differences between these two categories of employees for purposes of determining their rights to appeal adverse actions. A difference may exist, however, if the employee at the agency that deals with national security matters also occupies a position that has been designated national security sensitive. In that case, the employee's adverse action rights will depend upon how the Federal Circuit resolves the issues in *Berry v. Conyers*, No. 2011-3207 (Fed. Cir.) (en banc). Although this issue is unlikely to come before the Court of Federal Claims, if I were confirmed, I would apply all applicable precedent to the cases before me.

**a. Considering any stated differences, should these two employees be subject to different rights to appeal adverse actions taken against their employment status? Why or why not?**

Response: Please see the answer above; the question of the extent to which these two employees should be subject to different rights to appeal adverse actions will depend



upon how the Federal Circuit resolves the *Berry v. Conyers* case. Although the issue is unlikely to come before the Court of Federal Claims, if I were confirmed, I would apply all applicable precedent to the cases before me.

**Questions for the Record**

Hearing: Nominations

May 8, 2013

Submitted by Senator Amy Klobuchar

**Questions for Elaine D. Kaplan, nominated to be a Judge of the United States Court of Federal Claims:**

- 1. If you had to describe it, how would you characterize your judicial philosophy?  
How do you see the role of the judge in our constitutional system?**

My judicial philosophy is that every dispute must be approached with an open mind and resolved solely on the basis of a faithful application of the governing law to the facts as determined based on the evidence submitted by the parties. It is critical that a judge be respectful of all parties, a good listener, and an active questioner. A judge should be transparent—that is, he or she should clearly explain the thinking and analysis that forms the basis for his or her resolution of cases.

The role of the judge in our constitutional system, as expressed by the Supreme Court in Marbury v. Madison, is “to say what the law is.” Judges do not make the law; instead they interpret the laws enacted by Congress, based on statutory language and governing precedent, and then apply those laws to the facts before them.

- 2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

My record as an attorney and as a government official demonstrates a history of neutrality and even-handedness. My legal career has been characterized by the representation of a variety of points of view. On the one hand, I have represented labor unions and individuals in employment disputes against the United States. On the other, I have been counsel for the United States as employer in such disputes. I also held a five year appointment as the head of the Office of Special Counsel where I was charged with being an advocate for the merit based civil service. In that role, I oversaw the investigation of complaints against federal agencies, sometimes in politically sensitive contexts. In some instances, I concluded that the complaints were meritorious and my office secured relief on behalf of the complainants. In others, I concluded that the complaints lacked merit, and they were dismissed. As Special Counsel, I applied the laws to individuals without any regard to their political beliefs, economic class, or any other irrelevant characteristic.

**3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

Judges must faithfully apply the doctrine of stare decisis. It is a critical component of our system of justice, because it provides stability and certainty in the application of the law. District courts and the U.S. Court of Federal Claims are required to follow the binding precedent of their governing circuit, unless and until such precedent is overruled. The courts of appeals are similarly required to follow the rulings of the Supreme Court. The Supreme Court may overrule its own earlier precedent, but in doing so it follows well-established standards for determining whether it is appropriate to depart from principles of stare decisis.

**Responses of William H. Pryor Jr.,  
Nominee to the United States Sentencing Commission,  
to the Written Questions of Senator Chuck Grassley**

**1. Why do you want to serve on the Sentencing Commission?**

Response: I am committed to the mission of the Sentencing Commission to establish guidelines and policies that make federal sentencing more honest, fair, and rational. After the decision of the Supreme Court in *United States v. Booker*, which made the federal sentencing guidelines advisory with appellate review for reasonableness, the Sentencing Commission faces new challenges in fulfilling that mission. I would be honored to assist the Commission in that endeavor.

**2. What unique skills, perspective or experience will you bring to the Commission—what do you hope to contribute?**

Response: I believe that my experiences as a federal circuit judge for the last nine years and formerly as a state attorney general for seven years would allow me to make meaningful contributions to the work of the Commission. If confirmed as a commissioner, I would be the only circuit judge to serve on the current Commission, and I would be the only commissioner with experience in the creation and work of a state sentencing commission.

**3. According to the United States Sentencing Commission's 2010 Annual Report, the offense type with the highest within-guideline sentencing range was simple drug possession, with 94.9% of such cases resulting in a within-guideline sentence. Manslaughter had the highest rate of above-range sentences based on *Booker*, at 10.9%. Conversely, child pornography offenses had the highest rate of below-range sentences, at 42.7%.**

- a. I understand that many of these cases may have involved a government-sponsored departure, but do you think it is possible that the beliefs of judges about the nature and seriousness of particular offenses might be playing a role in the rates of above and below range sentencing, post-*Booker*?**

Response: Post-*Booker*, district judges must consider both the nature and seriousness of the offense, 18 U.S.C. § 3553(a)(1), (2)(A), in deciding whether to sentence an offender outside the guideline range. For that reason, the beliefs of judges about both the nature and seriousness of particular offenses is, without doubt, playing a role in the rates of above and below range sentences.

**b. If not, what do you think explains this variance by offense?**

Response: Not applicable.

**4. Legal scholars generally recognize four purposes for imposing criminal sentences: retribution, incapacitation, rehabilitation and deterrence. Sometimes, these purposes may contradict one another. When such situations arise, the different purposes must be prioritized.**

**a. If deterrence and rehabilitation were in conflict such that both could not be emphasized equally, which would you emphasize in determining an appropriate sentencing range?**

Response: I would give priority to deterrence.

**b. If you would emphasize rehabilitation, what effect do you think that emphasis might have on potential future offenders?**

Response: Not applicable.

**5. Do you believe that mandatory minimum sentences are more likely to deter certain types of crime than discretionary or indeterminate sentencing?**

Response: Because certainty in punishment deters crime as a general rule, a mandatory minimum sentence is more likely to deter offenders than the uncertainty of punishment that is characteristic of indeterminate sentencing.

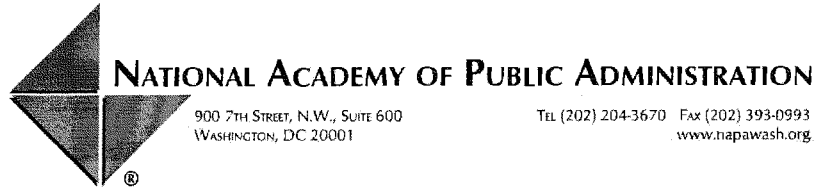
**6. As a sitting federal judge, you have participated in the adjudication of hundreds of federal appeals of criminal convictions. Would you please describe how this experience will aid you on the Commission?**

Response: In *Booker*, the Supreme Court stated that it expected that appellate review for reasonableness would reduce sentencing disparity, and the Sentencing Commission is evaluating sentencing data, post-*Booker*, to test that expectation. My experience as a circuit judge could assist the Commission in understanding how circuit judges decide sentencing appeals and apply standards of review as the Commission considers whether to recommend to Congress changes in the operation of this system. My experience could also assist the Commission in understanding the potential reaction of circuit judges to proposed changes in sentencing guidelines and policies.

**Response of William H. Pryor Jr.,  
Nominee to the United States Sentencing Commission,  
to the Written Questions of Senator Amy Klobuchar**

**Part of your role on the Sentencing Commission would be serving as a resource of information for all branches of government, criminal justice practitioners, the academic community, and the public. What would you do to ensure that critical new research and updated information is getting to each of these different groups? How will you incorporate input from these parties into the Commission's policies?**

Response: The Commission currently publishes and widely distributes a wealth of information about its research and policies. These publications include, for example, Guideline Manuals, Reports to Congress, Research Publications, Working Group Reports, and Sourcebooks of Federal Sentencing Statistics. These publications are available to the public for free download on the website for the Commission, [www.ussc.gov](http://www.ussc.gov), and are printed in hard copies by the Government Printing Office and then distributed to officials, participants in the criminal justice system, and the public. The Commission also solicits input from advisory groups, sponsors training seminars, and conducts public hearings to further its work. I would support continuing these programs and any others that would serve the purposes of Congress in creating the Commission.



**THE HONORABLE DAN G. BLAIR**  
 PRESIDENT AND CEO

April 22, 2013

The Honorable Charles Grassley  
 Ranking Member  
 Committee on the Judiciary  
 United States Senate  
 Washington, DC 20510

Dear Senator Grassley:

I am writing to urge you and the Committee on the Judiciary to favorably report the nomination of Elaine D. Kaplan to the U.S. Court of Federal Claims. Ms. Kaplan is an outstanding and dedicated public servant and I give her my highest recommendation to serve on that court.

I have had the distinct pleasure of knowing Ms. Kaplan in a professional capacity since 1998 when she was nominated, and later confirmed, as Special Counsel with the Office of Special Counsel. I served as Senior Counsel to the Senate Committee on Governmental Affairs at that time and was charged with shepherding her nomination through the Committee and the Senate. Her nomination was not contested and the Senate voted unanimously to confirm her.

Ms. Kaplan served admirably in that position and worked hard to strengthen the operations of that office. She was responsive to Congress and conducted her affairs, and those of her office, in accordance with the law. Her term of office as Special Counsel extended into the first two years of the George W. Bush Administration and she worked collaboratively with me while I served as Deputy Director of the U.S. Office of Personnel Management. For example, OPM and OSC worked together on drafting and promulgating regulations implementing the *No Fear Act of 2002*. Further, she directed OSC in establishing a certification program for agencies regarding educating employees on whistleblower rights, and she worked closely with OPM leadership in gaining OSC certification.



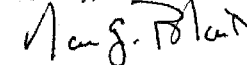
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April 22, 2013  
The Honorable Charles Grassley  
Page 2

Ms. Kaplan has continued her public service over the past five years as General Counsel at OPM. She has proven to conduct her duties in an accessible and open manner. If confirmed, Ms. Kaplan would approach her office with fairness and impartiality.

I urge the Committee to take timely action in moving favorably forward on her confirmation and recommend her without reservation.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan G. Blair". The signature is written in a cursive, flowing style.

Dan G. Blair

cc: Senator Patrick J. Leahy  
Committee on the Judiciary



RECEIVED APR 17 2013

U.S. MERIT SYSTEMS PROTECTION BOARD  
Washington, D.C. 20419

April 17, 2013

The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

The Honorable Charles Grassley  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

I write in support of the nomination and confirmation of Elaine D. Kaplan to the U.S. Court of Federal Claims. Her professional experience, qualifications and demeanor make her an excellent choice for this appointment. I have known Elaine over 12 years, during which time our careers have dovetailed in the field of Federal civil service law and human resources management.

We met in early 2001 while she was serving as Special Counsel at the U.S. Office of Special Counsel (OSC). I had just recently been appointed General Counsel at the U.S. Office of Personnel Management (OPM) in the George W. Bush administration. We worked closely on drafting and promulgating the initial regulations implementing the *No Fear Act of 2002* (P.L. 107-174). Following her term at OSC, Elaine practiced law in the private sector and then rejoined the National Treasury Employees Union (NTEU) as Senior Deputy General Counsel. During this time we both worked on personnel issues and legal arguments dealing with the standoff of the Department of Homeland Security, the National Security Personnel System, and various other legal issues reaching the Supreme Court for resolution. While not always in agreement, I was extremely pleased that our professional respect, personal friendship, and ability to maintain open and productive lines of communication did not waiver.

In 2009, Elaine was named by the Obama Administration to my former position as General Counsel at OPM. Several years later, the Senate Republican leadership recommended me to President Obama for nomination to a seven year term on the U.S. Merit Systems Protection Board (MSPB). I was confirmed in April, 2012. So once again we find ourselves working on common issues relevant to the Federal civil service. It should be noted that OSC, OPM and the MSPB are all successor agencies to the former U.S. Civil Service Commission (1883-1979).

Messrs. Leahy and Grassley, (cont'd) -2-

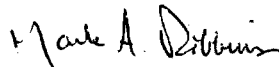
April 17, 2013

As is clear from our backgrounds, Elaine and I do not always agree on public policy matters or legal strategies related to the management of the Federal civil service. But throughout our professional discourse she has shown the deference and respect for many sides of an argument, an attribute that would serve her well on the bench. Her dedication and intelligence have resulted in her reputation in the Federal human resources community as both a good lawyer and a good manager. And as I mentioned above, she always keeps lines of communication open with those who find themselves on the opposite side of a given issue from her.

Her experience makes her an ideal candidate for the Court of Federal Claims. Her tenure as Special Counsel developed skills as an investigator and prosecutor. Her time at NTEU firmly established her impressive legal credentials and interpersonal skills of communication and respect for individuals. And I can personally attest, having held the position myself, that her service as General Counsel at OPM has given her ample experience with Federal contracting and procurement issues. I believe all this adds up to an excellent level of judicial temperament necessary to be successful in the position to which she has been nominated. In addition, the U.S. Court of Appeals for the Federal Circuit is the reviewing court for both the Court of Federal Claims and on many issues of importance to the Federal workforce. Her familiarity with that court and its workings and precedents will be beneficial in her new position.

I am proud of my twelve year association with Elaine and know that she will make an excellent judge. I stand ready to assist the Senate in any way possible and appropriate in the confirmation process. I can be reached directly at (202) 254-4402 or [mark.robbyns@mspb.gov](mailto:mark.robbyns@mspb.gov).

Sincerely,



Mark A. Robbins  
Member

MAR/cjn

NATIONAL WHISTLEBLOWERS  
LEGAL DEFENSE & EDUCATION FUND

1117 17th St. N.W. WASHINGTON, DC 20007 202-342-1902 (tel) 202-342-1904 (fax) WWW.WHISTLEBLOWERSBLOG.ORG

April 25, 2013

The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

The Honorable Charles Grassley  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

I am writing to you to strongly support the nomination and confirmation of Elaine Kaplan to the United States Court of Federal Claims. In my opinion, which is widely shared by others who know and have worked with Ms. Kaplan, she possesses the skills, temperament, and impartiality to make an excellent federal judge.

I have known Ms. Kaplan professionally since the mid 1990s, in both my capacity as a litigator on behalf of whistleblowers and as the President and Executive Director of the National Whistleblower Center. We worked together during that time on two very important whistleblower cases that I had filed in U.S. District Court and the United States Court of Appeals for the District of Columbia Circuit. *Weaver v. Wick*, F.2d (D.C. Cir. 1995)(in which Ms. Kaplan presented oral argument on behalf of an amicus supporting my client, a whistleblower at the Voice of America); and *Sanjour v. EPA*, 56 F.3d 85 (D.C. Cir. 1995)(en banc)(for which Ms. Kaplan provided assistance to me in preparing for my own oral argument).

These two cases are now the key precedent permitting federal employee whistleblowers access U.S. District Courts in order to assert their First Amendment right to expose wrongdoing in their agencies. These cases both remain good law, and have been cited favorably in a number of important whistleblower cases, including one written by Justice Samuel Alito while he served on the U.S. Court of Appeals for the Third Circuit. See *Swartzwelder v. McNeill*, 297 F.3d 228 (3<sup>rd</sup> Cir. 2002). In a current case that I am serving as lead counsel, *Hardy v. FDA*, 1:11-cv-01739-RBW, these two cases serve as the cornerstone for the federal court action filed on behalf of six current and former employees of the Food and Drug Administration who are challenging the constitutionality of the FDA's targeted surveillance of whistleblowers.

I also worked with Ms. Kaplan when she served as Special Counsel at U.S. Office of Special Counsel between 1998 and 2003. Ms. Kaplan's term began during the Clinton Administration and lasted through the first two years of the Bush Administration. She was a breath of fresh air in that office. Her team was highly competent and truly cared about federal employees. Although I did not agree with all her decisions as Special Counsel, she rightfully gained a reputation as a strong leader and impartial watchdog for the merit system.

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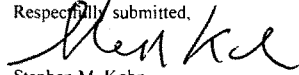
I directly witnessed Ms. Kaplan's competence, honesty and commitment to the rule of law. The *Weaver* and *Sanjour* cases were hard-fought, and set important precedent. Her assistance was invaluable and the precedent she helped set have helped all federal workers. I know of no other judicial nominee who has this record on supporting whistleblowers. I am unaware of any other nominee for a federal court judgeship who actually litigated on behalf of whistleblowers, and who actually prevailed in cases that were highly significant and which established real rights for federal employees.

Ms. Kaplan should be confirmed quickly and unanimously. I hope that the Judiciary Committee uses this nomination to send to the President that more attorney who have litigated on behalf of whistleblowers should be nominated to the federal bench, especially for open positions on the U.S. Court of Appeals for the Federal and District of Columbia Circuits.

In short, Ms. Kaplan's record of on behalf of whistleblowers, combined with her prior accomplishments, her fairness, and good judgment, make her an ideal candidate for a judicial appointment.

If there is any additional information I can provide regarding Ms. Kaplan, I would be happy to do so. I can be reached directly at (phone number) or [smk@kkc.com](mailto:smk@kkc.com).

Respectfully submitted,

  
Stephen M. Kohn

**Government Accountability Project**

National Office  
1612 K Street · Suite 1100  
Washington, DC 20006  
202-457-0034 · fax: 202-457-0059  
· Website: [www.whistleblower.org](http://www.whistleblower.org)

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May 16, 2013

The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C 20510

The Honorable Charles Grassley  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

This letter is to offer unqualified support for the nomination of Ms. Elaine Kaplan to the U.S. Court of Claims. Both inside and outside government, she has made a difference promoting justice, whether as an advocate or as a public servant who must responsibly balance competing interests. Her record off the bench reflects the commitment, skills and objectivity to make an equally significant or greater contribution as a judge.

This praise is rare from an activist in government accountability during the last 34 years who represents whistleblowers, which has been my career. As a rule, my relationship with government officials is adversarial, and my work with Ms. Kaplan has nearly all involved either her duties as the Special Counsel leading the U.S. Office of Special Counsel ("OSC"), or as General Counsel of the U.S. Office of Personnel Management ("OPM"). While the two institutions often represent adversarial interests to each other, her approach to public service has been comparable at each. Consistently she has been accessible, listens, and is trustworthy with her word. Perhaps most significant, whichever perspective she represents, the primary criterion for her decisions has been the strength of the merit system -- the common public policy mission for which she has leading stewardship duties. That is why I believe she has handled herself as an outstanding public servant. I maintain that belief despite often not getting results I sought from advocacy with her.

Ms. Kaplan also has compiled the track record of a public servant who makes a difference. I first began working with her in 1998 when she became Special Counsel. Until that point, the Office's record was so poor that at the Government Accountability Project ("GAP")

we routinely warned whistleblowers not to file complaints if there were any alternative, because the OSC likely would undermine their rights. Under her leadership, the OSC became our first option whenever there was jurisdiction. When Ms. Kaplan left, there was widespread consensus that she had been the best Special Counsel since the Office's creation in 1978. Her accomplishments included – sharply reducing backlogs while sharply increasing the record of obtaining relief for victims of merit system violations; effectively screening and ordering agency investigations on whistleblowing disclosures of national significance for, *inter alia*, homeland security, food safety, international anti-corruption campaigns and the environment, while holding agencies accountability to address the issues in good faith; and establishing unprecedented communications and responsiveness to all stakeholders affected by the merit system through town meetings, an effective ombudsman, and personal interventions so that affected whistleblowers were heard and knew their rights had been taken seriously.

At the U.S. Office of Personnel Management, Ms. Kaplan has been an effective voice to responsibly balance national security concerns with merit system rights. She played a welcome role in helping to achieve a legitimate balance for administration proposals that eventually became law as the Whistleblower Protection Enhancement Act, and Presidential Policy Directive 19.

In short, Ms. Kaplan personifies the qualities serving justice that not only taxpayers, but citizens of a free country expect, but normally do not believe they receive from judges. She has proved herself in all contexts. Hopefully her nomination will be confirmed expeditiously.

Respectfully submitted,

  
Thomas Devine  
Legal Director

May 3, 2013

THE UNIVERSITY OF  
**ALABAMA**  
 SCHOOL OF LAW

The Honorable Patrick J. Leahy, Chair  
 Senate Judiciary Committee  
 224 Dirksen Senate Office Building  
 Washington, D.C. 20510

---

Dear Senator Leahy:

It is my pleasure to support the nomination of Judge William H. Pryor as a member of the United States Sentencing Commission.

I have known Judge Pryor for over 15 years. During that time, we have worked together on sentencing reform in Alabama; I have attended conferences at which he has served as a speaker or panelist; and as a faculty member, I have followed his service to the University of Alabama School of Law in various capacities including adjunct professor of law. He would be an excellent Commissioner.

I first met Judge Pryor about 1997 just after he was appointed Attorney General of the State of Alabama. I was impressed by the fact that as a young, newly appointed Attorney General, he almost immediately began a campaign to reform Alabama's sentencing laws. Many Alabamians, including me, knew that our criminal justice system was in crisis. What we most needed was a strong leader for reform. As Attorney General, Bill Pryor was positioned to lead a reform effort, and that is what he chose to do.

Joseph A. Colquitt  
 Jere L. Beasley Professor of Law  
 and  
 Director of Trial Advocacy  
 (205) 348-1145  
 Fax (205) 348-1142  
[jcolquitt@law.ua.edu](mailto:jcolquitt@law.ua.edu)

Dana Waid  
 Advocacy Assistant  
 (205) 348-7865

Having already served as a state circuit judge and as criminal law and procedure professor for over 20 years, and having taught criminal sentencing for years to judges and law students, I well understood the challenges Bill Pryor would face – and face them he did. He admirably navigated complex political and financial situations to begin sentencing reform efforts that continue to this day. He allied with then Alabama Supreme Court Chief Justice Perry Hooper to start sentencing reform in Alabama, and was instrumental in creating the Alabama Sentencing Commission. He built a coalition for sentencing reform. He convinced key legislators, judges and prosecutors to support legislation, and helped obtain funding through grants and interagency transfers. He also assigned his Chief Assistant Attorney General to the Sentencing Commission on an almost full-time basis. She still serves the Commission as Vice-Chair.

Chief Justice Hooper appointed me to serve as Chair of the Alabama Sentencing Commission, a position I still hold. Thus, I am quite able to state from personal knowledge that without the leadership and assistance of Attorney General Pryor, the Sentencing Commission almost certainly would not have been established and likely would not have survived.

Box 870382  
 Tuscaloosa, Alabama 35487-0382



May 3, 2013  
Page 2

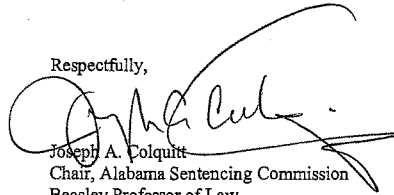
This Fall, Alabama will move from voluntary sentencing guidelines to presumptive guidelines for non-violent crimes. The Sentencing Commission, subject to legislative veto, can promulgate guidelines for non-violent crimes. We also will be proposing presumptive guidelines for violent crimes, but those will require legislative approval. Alabama is also implementing an appellate review of sentencing process. We continue to have overcrowded facilities, backlogs, shortage of funding, and many other challenges, but we also have a Commission and plans to address those issues. And that Commission and its work is a product of Attorney General Pryor's insight and efforts.

Judge Pryor is exceptionally well-qualified to serve on the United States Sentencing Commission. I remember encouraging Daniel Freed of the Yale Law School to seek appointment to the Commission a number of years ago. Professor Freed knew sentencing reform and would have been a splendid Commissioner. Judge Pryor not only knows sentencing reform, but he also has organized and orchestrated sentencing reform efforts.

Judge Pryor has demonstrated outstanding courage and leadership as an attorney general, a sentencing reformer, and a federal judge. He should be confirmed to serve as a Commissioner on the United States Sentencing Commission.

If I can be of further assistance, please feel free to call on me.

Respectfully,

  
Joseph A. Colquitt  
Chair, Alabama Sentencing Commission  
Beasley Professor of Law  
The University of Alabama  
School of Law  
and Circuit Judge -- Retired (Alabama)

**SETH HAMMETT**

Speaker Emeritus  
Alabama House of Representatives

May 3, 2013

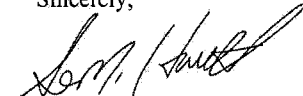
The Honorable Patrick J. Leahy, Chair  
Senate Judiciary Committee  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Senator Leahy:

While serving as Alabama's Attorney General, Judge Bill Pryor approached me with his vision to establish a permanent sentencing commission as a separate agency under Alabama's Supreme Court. In my role as Speaker of the Alabama House of Representatives, I worked with Judge Pryor to bring his vision to reality. I consider the legislation creating the Alabama Sentencing Commission to be one of the hallmarks of my tenure as Speaker, but Judge Pryor deserves the lion's share of credit for his deliberate research and passionate advocacy. His legacy is a well-respected and valuable asset to our state's judicial and criminal justice system.

It is my honor to offer this letter in support of Judge Pryor's nomination to serve on the U.S. Sentencing Commission. He is exceptionally qualified to serve and will do so with distinction and honor.

Sincerely,



Seth Hammett

Post Office Box 1776  
Andalusia, Alabama 36420

**BAXLEY, DILLARD, MCKNIGHT & JAMES**

ATTORNEYS AT LAW  
2008 THIRD AVENUE SOUTH  
BIRMINGHAM, ALABAMA 35233-2102  
www.baxleydillard.com

May 6, 2013

VIA FAX TO 202.224.9516

WILLIAM J. BAXLEY  
JOEL E. DILLARD  
DAVID MCKNIGHT  
RANDY JAMES  
ELIZABETH W. MCELROY  
KRISTIN W. SULLIVAN

TELEPHONE  
(205) 271-1100  
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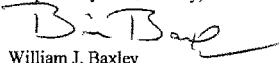
The Honorable Patrick J. Leahy, Chair  
Senate Judiciary Committee  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Senator Leahy:

Please accept this as my highest and best recommendation of Judge Bill Pryor to serve on the U.S. Sentencing Commission. I have known Judge Pryor even before he succeeded me, by several terms, as Attorney General of Alabama, and have followed his career as a member of the United States Court of Appeals for the Eleventh Circuit, having supported his nomination without reservation. Judge Pryor's service on the Eleventh Circuit Court of Appeals has been exemplary. The fact that I am a Democrat, and that Judge Pryor was a Republican, was not daunting in the least when I enthusiastically supported his appointment to the Eleventh Circuit. I knew him well and knew that his career there would be exactly as it has been -- impeccably fair, above board, above politics, above reproach, above ideology, and above all that is expected of a United States Circuit Judge.

Not only is Judge Pryor exceedingly bright and exceedingly attuned to every nuance and consideration that can and should be taken into consideration in sentencing decisions, he is also fortunate to have served as Attorney General of Alabama at a time when state habitual offender laws fomented an inflexibility in sentencing in our state court system. This resulted in myriad unforeseen consequences for our judicial system, our corrections system, and our state budgets. He has served as a United States Circuit Judge throughout the evolution of federal sentencing guidelines from mandatory to discretionary, and has been exposed for many years as a hard working United States Circuit Judge to every extreme of sentencing imaginable, and has struck a fair and equitable chord within every Eleventh Circuit panel upon which he has served. Application of wisdom of this nature to the complex variety of issues that must be addressed by the U.S. Sentencing Commission in the discharge of its duty to the United States is critical to its mission. There is no better choice to accomplish this goal than Judge Bill Pryor.

Respectfully and sincerely,



William J. Baxley

Law Office Of  
**HALL & HALL, LLC**  
P.O.Box 530071  
Birmingham, AL 35253  
205.807.2985  
[jch@hall-law.com](mailto:jch@hall-law.com)

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May 6, 2013

The Honorable Patrick J. Leahy  
Chair Senate Judiciary Committee  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

Re: Judge William H. Pryor Nomination

Dear Chairman Leahy,

As a life-long Democrat, it is my privilege to offer my strongest endorsement to the President's nomination of Judge Bill Pryor for Commissioner of the United States Sentencing Commission.

As an active Democrat, I have worked on both the national and state level to improve my party, its candidates and its positions on many important issues. In 1996, I was one of only two Alabamians appointed to work with President Clinton and his representatives as a member of the National Democratic Party Platform Committee. I was also asked to Chair the Alabama Democratic Party Platform Committee and helped to write our state's first Party platform. My fondest memories as a Democrat are working closely with "the Judge", Senator Heflin, who, I know was a member of this distinguished Committee.

Despite some of our political differences, Judge Pryor and I worked together, while Judge Pryor was Alabama's Attorney General. As leaders of the Alabama Children First Foundation we worked together for the common purpose of improving the lives of our state's children and juveniles. We were highly successful, especially in our efforts to reform the Alabama Juvenile Justice System.

Within a few short years, largely as a result of General Pryor's willingness to propose and support common sense, even though not always popular, reforms, we are now seeing results. For example, the number of juveniles incarcerated by the Department of Youth Services between 2006 and 2010 decreased 44% and in 2009, serious juvenile crime declined by 9% statewide.

As a very popular Republican, in a very conservative state, Bill Pryor also had the vision and the political courage to speak out against the highly popular "Three strikes and you are out"

law which was resulting in the continued packing of our already overcrowded prisons with non-violent offenders. As Attorney General, Bill Pryor also worked to reform Alabama's criminal justice system, with primary emphasis on establishing truth-in-sentencing and eliminating unwarranted sentencing disparity. His work led to the permanent creation of the Alabama Sentencing Commission which continues to work to establish and maintain an effective, fair, and efficient sentencing system for Alabama.

In summary, as an active Democrat, I have worked with Judge Pryor firsthand, and watched his non-partisan approach and willingness to work with leaders of both political parties to seriously address the issues of Sentencing Reform. I wholeheartedly endorse Bill Pryor for this very important position and fully expect that his experience will quickly enable him to have a positive impact on the United States Sentencing Commission.

Respectfully submitted,

/s/ John Hall

John C. Hall

*Rosa Hamlett Davis*

May 8, 2013

The Honorable Patrick J. Leahy, Chair  
Senate Judiciary Committee  
224 Dirksen Senate Office Building  
Washington, D.C. 20510  
FAX: 202-224-9516

Re: Confirmation of Judge William H. Pryor, Eleventh Circuit Court of Appeals,  
as a member of the United States Sentencing Commission

Dear Senator Leahy,

Please accept this letter as my strong endorsement of the nomination and, hopefully, confirmation of Judge William H. Pryor as a member of the United States Sentencing Commission. I have known Judge Pryor since he joined the Alabama Attorney General's Office as a Deputy Attorney General in Alabama in the administration of then Attorney General Jeff Sessions. I continued to serve with him as an Assistant Attorney General when he was appointed Attorney General to serve out the term of Jeff Sessions after Mr. Sessions was elected to the Office of United States Senator.

I have served the State of Alabama for the last 40 years as an Assistant Attorney General. I must say that the day then General Pryor announced to the office that he had been appointed to serve on the Eleventh Circuit Court of Appeals was one of the best of days and one of the worst of days during those forty years. It was the best of days because I recognized this deeply committed public servant had the opportunity to fulfill his dream of serving on the federal bench. It was the worst of days because, even as a life long democrat, I realized the State of Alabama was losing one of its two most progressive attorneys general to serve during my tenure. This young Republican Attorney General had made a strong impact on Alabama in many ways in his ethical and committed approach to the public office entrusted to him by the people of Alabama.

Perhaps Judge Pryor's strongest impact came in the area of corrections and sentencing where he recognized the need for not only a strong impartial analysis of the operation of the criminal justice system from sentencing to release, but also a means to enact needed reforms. He frequently referred to Alabama's indeterminate system as "dishonest" and urged Alabama citizens and public officials to work toward a "fair, honest, and rational" system of sentencing. To this end he asked me, along with another assistant attorney general to research and draft legislation to create a sentencing commission for Alabama that would evaluate and monitor the state's criminal justice system and make recommendations to the legislature to improve the system. He obtained the cooperation

Leahy  
May 8, 2013  
Page 2

of our Republican Chief Justice, Democratic Governor, and Speaker of the House to obtain passage of the legislation creating a representative Commission that has worked for the last 10 years to make non-partisan recommendations for improvement in the system. . He appointed me, a democrat, to serve as his designee on the Commission. I have served as the Attorney General's representative since my original appointment.

The Commission created with Judge Pryor's strong leadership has made some strides in creating a more fair, effective, and efficient sentencing system in Alabama. The Commission has been successful in slowing down the growth in the State's crowded prison population and increasing the availability of alternative sentencing options in Alabama. The Commission has also introduced risk and needs assessment as a tool in case planning for supervised convicted offenders, a concept Judge Pryor insisted be included in the duties of the Commission.

I recommend the confirmation of Judge Pryor because my experience working with him on sentencing issues has allowed me to personally observe his commitment to fair, honest, and rational sentencing. I have seen him come to understand the relationship between funding and sentencing options necessary to create effective sentencing. I believe he will bring much to the table in terms of intellect, knowledge, and understanding as a member of the United States Sentencing Commission. While strong political leadership outside the Commission is necessary to support the Commission's recommendations and such leadership is not always available, the Commission, created under Judge Pryor's leadership, has been successful in implementing a system sentencing guidelines that, though far from perfect, bring more consistency and rationality to sentencing in Alabama. Sentencing is forever a "work in progress" with so many aspects and nuances. Judge Pryor's experience gives him a head start on creating and maintaining an effective system.

I urge the Senate to act expeditiously in confirming Judge Pryor to serve on the U.S. Sentencing Commission.

Sincerely,

Rosa H. Davis

700

May 2, 2013

The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Charles Grassley  
Ranking Member  
Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, DC 20510

**Re: Nomination of Rachel Barkow**

Dear Chairman Leahy and Ranking Member Grassley:

We write in support of Rachel Barkow's nomination to serve as a Commissioner on the U.S. Sentencing Commission.

All of us worked alongside Rachel as law clerks at the Supreme Court of the United States during the 1997–98 Term. Rachel earned the greatest respect from each of us for her strong character, sharp intellect, tireless enthusiasm and good humor, and legal acumen. Since her clerkship, Rachel has served with great distinction in private practice and as a law professor, most recently having served for eleven years as a professor at New York University School of Law. She is widely regarded as one of the nation's foremost experts on criminal law and sentencing policies.

We have no doubt that, should she be confirmed, Rachel would serve with great distinction, and we therefore support her nomination to serve as a Commissioner on the U.S. Sentencing Commission without reservation.

Sincerely,

Samuel R. Bagenstos  
Professor of Law  
University of Michigan Law School\*  
Ann Arbor, Michigan  
*Law Clerk to Justice Ruth Bader Ginsburg, 1997-98*

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\* For all signatories, institutional affiliations are provided for identification purposes only.



May 2, 2013

Page 2

J. Scott Ballenger  
Partner  
Latham & Watkins LLP  
Washington, D.C.  
*Law Clerk to Justice Antonin Scalia, 1997-98*

Anthony J. Bellia Jr.  
Professor of Law and Notre Dame Presidential Fellow  
University of Notre Dame  
Notre Dame, Indiana  
*Law Clerk to Justice Antonin Scalia, 1997-98*

Paul Schiff Berman  
Vice Provost for Online Education and Academic Innovation and  
Manatt/Ahn Professor of Law  
George Washington University  
Washington, D.C.  
*Law Clerk to Justice Ruth Bader Ginsburg, 1997-98*

Stephanos Bibas  
Professor of Law and Criminology and Director of the Supreme Court Clinic  
University of Pennsylvania  
Philadelphia, Pennsylvania  
*Law Clerk to Justice Anthony M. Kennedy, 1997-98*

Elizabeth Cavanagh  
Adjunct Professor  
Washington College of Law, American University  
Washington, D.C.  
*Law Clerk to Justice John Paul Stevens, 1997-98*

Thomas Colby  
Professor of Law  
George Washington University Law School  
Washington, D.C.  
*Law Clerk to Justice David H. Souter, 1997-98*

Laura A. Dickinson  
Oswald Symister Colclough Research Professor of Law  
George Washington University Law School  
Washington, D.C.  
*Law Clerk to Justice Stephen G. Breyer and Justice Harry Blackmun, 1997-98*

David Friedman  
Senior Vice President/Special Counsel  
Boston Red Sox  
Boston, Massachusetts  
*Law Clerk to Justice John Paul Stevens, 1997-98*

May 2, 2013  
Page 3

Lisa Kern Griffin  
Professor of Law  
Duke Law School  
Durham, North Carolina  
*Law Clerk to Justice Sandra Day O'Connor, 1997-98*

Deborah Hamilton  
Trial Attorney  
Equal Employment Opportunity Commission  
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